IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff-Respondent,	)	
v.	)	NOS. 78-C-413-B
	)	76-CR-13
PHILLIP BRADLEY POLK, Defendant-Movant.	)	

ORDER

The Court has for consideration a motion pursuant to 28 U.S.C. § 2255 filed pro se, in forma pauperis, by Phillip Bradley Polk. The cause has been assigned civil Case No. 78-C-413-B and docketed in his criminal Case No. 76-CR-13.

Movant is a prisoner in the Oklahoma State Penitentiary, McAlester, Oklahoma, and a detainer is filed pursuant to conviction and sentence in this Federal Court. His Federal conviction is upon jury conviction of Count One, conspiracy in violation of 18 U.S.C. § 371, and on Counts Two and Three, the substantive offenses, of causing interstate transportation of forged securities in violation of 18 U.S.C. § 2314. He was sentenced March 11, 1976, to 10 years' imprisonment on each Count Two and Three, the sentence on Count Three to run concurrently with the sentence on Count Two. On Count One, the imposition of sentence was suspended and he was placed on 5 years' probation, to commence on expiration of the sentence on Counts Two and Three, and it is a condition of probation that he make restitution of $235.00 within the first three years of probation, payable at the rate of $8.00 per month. The conviction and sentence were affirmed on direct appeal. United States v. Polk, 550 F.2d 1265 (10th Cir. 1977) cert. denied 434 U. S. 838 (1977).

In his § 2255 motion, Movant demands his release from custody and as grounds therefor claims that he is being deprived of his liberty in violation of his rights guaranteed by the Constitution of the United States of America. In particular, Movant claims:

1. The Trial Court's failure to give cautionary instruction on testimony of accomplices is plain error requiring reversal of conviction.

2. Defendant's conviction violates the Supreme Court mandate of Giglio v. United States, 405 U. S. 150 (1972) in that it was not made known to the jury when co-defendant testified that he had been promised leniency for his testimony. Further, defense counsel was not advised prior to the trial that co-defendant was entering a plea of guilty causing prejudice to Movant.

3. There was insufficient evidence to prove the essential elements of the crimes charged.

The Court has carefully reviewed the motion, supplement, letters from the Movant, and criminal file. Being fully advised in the premises, the Court finds that the claims presented are without merit, there is no necessity for response or evidentiary hearing, and the § 2255 motion should be denied.

Movant's first claim is without merit, as the jury was instructed:

> "An accomplice is one who unites with another person in the commission of a crime, voluntarily and with common intent. An accomplice does not become incompetent as a witness because of participation in the crime charged. On the contrary, the testimony of an accomplice alone, if believed by the jury, may be of sufficient weight to sustain a verdict of guilty, even though not corroborated or supported by other evidence. However, the jury should keep in mind that such testimony is always to be received with caution and weighed with great care.
>
> "You should never convict a defendant upon the unsupported testimony of an alleged accomplice, unless you believe that unsupported testimony beyond a reasonable doubt.
>
> "The plea of guilty of one alleged to be an accomplice with reference to the charges involved herein is no evidence of the guilt of the defendant on trial and gives rise to no inference against the defendant on trial."

Movant's second claim is not true and is unsupported by fact. There was a plea-bargain by Movant's co-defendant, but it was not entered to obtain the co-defendant's testimony at Movant's trial. The plea bargain appears of record in the trial transcript. The co-defendant pled guilty to Counts One and Two, Count Three was dismissed, and the Government stated of record that it interposed no objection to Defendant's request that the sentence imposed by the Federal Court be recommended to run concurrently with a sentence he faced in the State Court. The co-defendant was duly sentenced for his crime. Further, the plea was entered at the last minute before the trial commenced, and defendant and his counsel were present. The jury, of course, was excused for the plea proceedings to avoid any possible prejudice to the Movant. This second claim is without merit.

Movant's third claim that there was insufficient evidence to prove the essential elements of the crime is also without merit. The transcript clearly shows that the jury's verdict of guilty was not so devoid of evidentiary support that a due process issue is raised. Lorraine v. United States, 444 F.2d 1 (10th Cir. 1971); Williams v. United States, 371 F.2d 536 (10th Cir. 1967).

IT IS, THEREFORE, ORDERED that the motion pursuant to 28 U.S.C. § 2255 of Phillip Bradley Polk be and it is hereby overruled and dismissed.

Dated this 29th day of December, 1978, at Tulsa, Oklahoma.

Allen E. Barrow

CHIEF JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

LEROY LOGAN, et al., Plaintiffs,	)	
vs.	)	No. 77-C-363-C
CECIL D. ANDRUS, Secretary of the Interior, et al., Defendants.	)	

FILED

DEC 29 1978

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

The Court has before it for consideration the plaintiffs' motion to vacate judgment, to which all defendants object. The Court is convinced that its Order of October 5, 1978 adequately and correctly disposed of the issues raised and the relief requested in the plaintiffs' complaint. The constitutionality of the Osage Allotment Act was never an issue before this Court, and to grant the relief requested by plaintiffs in their motion would be to expand the scope of this case far beyond that within which it has proceeded since its inception. Accordingly, plaintiffs' motion to vacate judgment is hereby overruled.

It is so Ordered this 29th day of December, 1978.

H. DALE COOK
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT

OF OKLAHOMA

NORTHWEST BANK OF OKLAHOMA CITY, an Oklahoma corporation,

Plaintiff,

vs.

BETTY SUE HINES, a/k/a BETTY SUE HOUCK, JAMES BERKEY d/b/a THE TRUST HOUSE, LEROY D. HINES, THE UNITED STATES OF AMERICA, and JOHN F. CANTRELL, Treasurer of Tulsa County, Oklahoma,

Defendants.

UNITED STATES OF AMERICA,

Plaintiff on Cross-Claim and Counter-Claim,

vs.

CIV-78-320-B

BETTY SUE HINES a/k/a BETTY SUE HOUCK, JAMES BERKEY, d/b/a THE TRUST HOUSE, LEROY D. HINES, and JOHN F. CANTRELL, Treasurer of Tulsa County, Oklahoma,

Defendants on Cross-Claim

and

NORTHWEST BANK OF OKLAHOMA CITY, an Oklahoma Corporation,

Defendant on Counterclaim,

JOURNAL ENTRY OF JUDGMENT

This cause comes on regularly for hearing this 29th day of December, 1978, before the undersigned Judge of said Court, pursuant to regular assignment, and the Plaintiff appearing by its attorneys, George H. Ramey, and Moyers, Martin, Conway, Santee' & Imel, by Russell Cobb, III; the defendant, The United States of America appearing by its attorneys, L. Bruce Locke, Assistant United States Attorney, Tax Division, Department of Justice, Washington, D.C., and Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma; and the defendant, John F. Cantrell, Treasurer of Tulsa County, Oklahoma, appearing by its attorney, S. M. Fallis, Jr., District Attorney of Tulsa County, Oklahoma, by John F. Reif, Assistant District Attorney, and defendants, Betty Sue Hines also known as Betty Sue Houck; James Berkey doing business as The TRUST HOUSE; and Leroy D. Hines, and each of them, although three times called in open Court came not but made default.

The Court finds that the defendants, Betty Sue Hines, also known as Betty Sue Houck, James Berkey doing business, The TRUST HOUSE, Leroy D. Hines, and each of them, have been served with summons but said defendants have failed to answer as required by their summons or otherwise plead herein, and they are in default. The Court, having specifically examined the summons and returns thereon, finds that the same were made in the manner and form required by law, and it is THEREFORE ORDERED, that service on said defendants, and each of them, be and it is, hereby adjudged in all respects sufficient to give the Court jurisdiction, and it is in hereby in all respects approved. THEREUPON, IT IS THEREFORE ORDERED, that said defendants, and each of them, are hereby adjudged to be in default, and the allegations of Plaintiff's petition are taken as true and confesses against them, and each of them.

THEREUPON, this cause coming on for trial, trial by jury is waived in open Court, the Court having heard all the evidence and oral testimony, witnesses sworn and examined in open Court and being fully advised in the premises and on consideration THEREOF, FINDS, that all the allegations of the Plaintiff's petition are true as therein set forth, and Plaintiff is entitled to a judgment against the defendant, Betty Sue Hines, also known as Betty Sue Houck, for the principal sum due in the amount of $41,779.00, and interest which has accured as of the 21st day of December, 1978, in the amount of $2,677.98, and accruing thereafter at the rate of $8.99 per/diem, as provided in said note, extensions and mortgage, until paid, advances made with interest thereon, abstract costs in the amount of $102.00, costs of this suit and costs accruing, and attorney fees in the amount of $4,179.90.

THE COURT FURTHER FINDS that to secure payment of the above described indebtedness, attorney fees, interest and costs and by virtue of the mortgage described in the petition, the Plaintiff has a lien on the real estate and premises, with all buildings and improvements thereon and the appurtenances, hereditaments and all other rights thereunto belonging to, or in any way appertaining, described as follows:

> The West Half (W/2) of the North Half (N/2) of the North Half (N/2) of the Northeast Quarter (NE/4) of the Northeast Quarter (NE/4) of Section thirty-three (33), Township eighteen (18) North, Range Thirteen (13) East of the Inidan Base and Meridian, Tulsa County, State of Oklahoma, according to the United States Government Survey thereof.

and that said mortgage lien of the Plaintiff is prior and superior to the rights, claims and interest of the defendants, and each of them, in and to the premises. IT IS FURTHER appearing that the Plaintiff has elected under the terms of the mortgage to have the premises sold with appraisement, such election is hereby approved, and said real estate will be sold with appraisement.

THE COURT FURTHER FINDS that defendant, The United States of America, is entitled to a judgment against the defendant, Leroy D. Hines, in the sum of $774,540.71, plus interest according to law, and; for all costs of this action, and other and further relief which this Court deems just and proper.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, by the Court that Plaintiff do have and recover of and from the defendant, Betty Sue Hines also known as Betty Sue Houck, judgement for the sum of $41,779.00, and interest which has accrued as of the 21st day of December, 1978, in the

amount of $2,677.98, and accruing thereafter at the rate of $8.99 per/ diem, as provided in said note, extensions and mortgage, until paid, advances made with interest thereon, abstract costs in the amount of $102.00, costs of this suit and costs accruing, and attorney fees in the amount of $4,179.90.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, by the Court that defendant, The United State of America, have and recover from the defendant, Leroy D. Hines, the sum of $774,540.71, thereon until paid, interest accruing thereon, and costs and costs accruing.

IT IS FURTHER ORDERED, that upon failure of said defendants, or any of them, to satisfy the judgment of the Plaintiff, the Federal Marshall for the Northern District of Oklahoma, shall levy upon the premises and after having the same appraised as provided by law, shall sell said premises to the highest bidder, and shall immediately turn over the proceeds thereof to the District Court Clerk who shall apply the proceeds arising from said sale as follows:

1. In payment of costs of said sale and of this action; and the ad valorem taxes due Tulsa County Treasurer.

2. In payment to the Plaintiff in the full sum of its judgment with all accrued interest, costs, abstracting, and attorney fees.

3. In payment to the Defendant, The United States of America, in the full sum of its judgment with accrued interest, and costs.

4. That the residue, if any there be, be held by the Clerk of this Court to wait the further order of this Court, subject to the right of United States of America to redeem under 28 U.S.C. 2410.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, by the Court that from and after the sale of said real estate under and by virtue of this judgment and decree, that all the parties to this action, and each of them, and all persons claiming under them, or any of them, be and they are hereby forever barred and forever foreclosed of and from any and every lien upon, right, title, interest or equity or redemption in or to said real estate, or any part thereof, except the right of the United States of America to redeem pursuant to 28 U.S.C. 2410.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, by the Court that the mortgage be and the same is hereby established and adjudged to be as herein above set forth as a good and valid first lien upon the premises prior and superior to the right, title, interest, and lien of the defendants, therein, and each of them, and all persons claiming under them since the filing of the petition in this suit, and that the amounts found due upon the petition are secured by the mortgage as herein set forth.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the judgment of the United States of America be and the same is hereby established and adjudged to be as hereinabove set forth a good, and valid second lien upon the premises prior and superior to the right, title, interest, and lien of the Defendants, therein, and each of them, and all persons claiming under them, since the filing of the petition in this suit.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that upon confirmation of the sale hereinabove ordered, that the Federal Marshall for the Northern District of Oklahoma, shall execute and deliver a good and sufficient deed to the premises to the purchaser, which shall convey all of the right, title, interest, estate and equity of redemption of any of the parties herein, and all persons claiming under any of the parties herein, and each of the filing of the petition of this suit, and that

upon application of the purchaser, the Court Clerk shall issue a writ of assistance to the Federal Marshall of the Northern District of Oklahoma, who shall thereupon, and forthwith place the premises in the full possession and enjoyment of said purchaser.

JUDGE OF THE FEDERAL DISTRICT COURT

APPROVED:

GEORGE H. RAMEY
Attorney for Plaintiff

and

MOYERS, MARTIN, CONWAY, SANTEE' & IMEL

By _____
RUSSELL COBB III
Attorneys for Plaintiff

L. BRUCE LOCKE
United States Attorney,
Tax Division, Department of Justice
Washington, D.C.

By _____
ROBERT P. SANTEE
Assistant United States Attorney
Attorneys for the Defendant
THE UNITED STATES OF AMERICA

S.M. FALLIS, JR.
District Attorney for Tulsa County

By _____
JOHN F. REIF
Assistant District Attorney
Attorney for Defendant
JOHN F. CANTRELL
Treasurer of Tulsa County.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JANIE McGHEE,

Plaintiff,

vs.

DANIEL D. DRAPER, Superintendent; DANIEL D. DRAPER; FLOYD E. MOTT; MONTIE JONES; JERRY STAFFORD; DON LARSON; and QUENTIN RILEY;

Defendants.

No. 74-C-326-C

ORDER

The Court has before it for consideration the defendants' motion to dismiss for failure to state a claim upon which relief can be granted, motion to strike, motion to dismiss First Amendment claims and motion to dismiss Daniel D. Draper and his successor.

By Order dated May 19, 1978, the Court permitted plaintiff to amend her complaint, based upon her representation that she desired to ". . . state more precisely the First Amendment basis for her assertion that her 'liberty' was infringed. . . ." In response to that Order, plaintiff filed an amended complaint containing two "claims", or causes of action. The second claim is essentially a restatement of the liberty claim which she asserted in her original complaint. In her first claim, plaintiff alleges that her contract was not renewed because of her exercise of First Amendment rights. Thus, plaintiff has alleged an entirely new cause of action based upon the First Amendment and has not merely stated ". . . more precisely the First Amendment basis for her . . ." liberty claim. As the Court noted in its Order of May 19, 1978, the allowance of an amendment to a complaint following a remand is within the discretion of the district court. The primary factors to be considered are the delay to the proceedings and prejudice to the adverse party. The plaintiff's

amended complaint goes beyond what the Court considers to be the scope of its May 19 Order. At this point, the insertion of plaintiff's first cause of action and the consequent injection of new issues into this case could only serve to cause delay and to prejudice the defendants. Consequently, the Court hereby dismisses the first claim of plaintiff's amended complaint.

The defendants ask the Court to strike from plaintiff's amended complaint all requests for lost wages or reimbursement for any type of economic loss. Plaintiff seeks various forms of compensatory damages, as well as reinstatement and back pay. The Tenth Circuit Court of Appeals specifically affirmed this Court's determination that the plaintiff was not entitled to recover damages from any of the defendants. Clearly, all requests for such compensatory damages should be stricken from plaintiff's amended complaint.

This case was remanded for a consideration of proper equitable relief incident to plaintiff's liberty claim; the Circuit Court held that the plaintiff had not been deprived of any property interest and, as this Court has previously ruled and as the Circuit Court noted, plaintiff has presented no claim arising under the First Amendment. In Codd v. Velger, 429 U.S. 624, 97 S.Ct. 882, 51 L.Ed.2d 92 (1977), the Supreme Court held that in a liberty claim/stigmatization case, ". . . the remedy mandated by the Due Process Clause of the Fourteenth Amendment is 'an opportunity to refute the charge.' [citation omitted] 'The purpose of such notice and hearing is to provide the person an opportunity to clear his name', . . ." 429 U.S. at 627. Relying upon that decision, the Fifth Circuit, in Dennis v. S & S Consolidated Rural High School District, 577 F.2d 338 (5th Cir. 1978), held that reinstatement and back pay were inappropriate remedies to provide a plaintiff who had proved a stigma-type liberty infringement, noting that "[t]he school board in

this case was under no obligation to rehire [plaintiff], regardless of whether any or all reasons offered to explain his non-retention proved to be false." 577 F.2d at 344. The Eighth Circuit is more liberal in the remedies it allows under such circumstances, permitting the award of backpay. under some circumstances. See, e.g. Wellner v. Minnesota State Junior College Board, 487 F.2d 153 (8th Cir. 1973). However, the Eighth Circuit is consistent with the overwhelming weight of authority in all Circuits that reinstatement is an inappropriate remedy to apply in a stigma-type liberty case where no property or First Amendment issues are involved. In view of the holding of the United States Supreme Court in Board of Regents of State Colleges v. Roth, 408 U.S. 564, 573, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972), that "[o]nce a person has cleared his name at a hearing, his employer, of course, may remain free to deny him future employment for other reasons," this Court is of the opinion that reinstatement is an improper remedy in a case such as the instant one, and, consequently, plaintiff's claim for such reinstatement is hereby stricken.

The Tenth Circuit Court of Appeals has very recently had occasion to consider the scope of the qualified immunity available to defendants such as those in the instant case. In Bertot v. School District No. 1, Albany County, Wyoming, No. 76-1169, November 15, 1978, the Court held that the good faith, qualified immunity defense operates to protect school board members in their official, as well as their individual capacities, and also to protect the board as such. On the appeal in the instant case, the Circuit Court held that "[t]he overwhelming evidence demonstrated good faith by the board under the qualified immunity standard set forth in Wood v. Strickland, 420 U.S. 308, 322, 95 S.Ct. 992, 43 L.Ed.2d 214." 564 F.2d at 913. Therefore, the individual defendants in this case are immune from damages in both

their individual and official capacities. The Court in Bertot also held that backpay was to be considered as monetary damages for the purpose of the qualified immunity defense. Consequently, the plaintiff in this case would not be entitled to an award of backpay against the defendants, and her claim for that relief must be stricken.

Under the circumstances of this case and the guidelines established for this Court by the mandate of the Tenth Circuit Court of Appeals, the only remedy available to the plaintiff, assuming that she were successful in establishing an infringement of a liberty interest, would be a court-ordered hearing before the school board. However, as the Circuit Court noted, plaintiff has never sought an opportunity to "clear her name" at a hearing conducted by the defendants acting as a school board. Neither her original complaint nor the amended complaint filed after remand of this action contain a request for such a hearing. Consequently, as this action is now before this Court, plaintiff does not seek any relief which the Court would be authorized to provide her. Under the circumstances, the Court feels compelled to order that this action be dismissed.

For the foregoing reasons, defendants' motion to dismiss First Amendment claims and motion to strike are hereby sustained, and this action is hereby dismissed in its entirety. In view of those rulings, the defendants' motion to dismiss for failure to state a claim upon which relief can be granted and motion to dismiss Daniel D. Draper and his successor are now moot.

It is so Ordered this 29th day of December, 1978.

/s/ Dale Cook

H. DALE COOK
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff-Respondent,	)	
v.	)	NOS. 78-C-471-B
	)	74-CR-28
RICHARD ZACK MASON, Defendant-Movant.	)	

O R D E R

The Court has for consideration a motion pursuant to 28 U.S.C. § 2255 filed pro se by Richard Zack Mason. The cause has been assigned civil Case No. 78-C-471-B and docketed in his criminal Case No. 74-CR-28.

Movant is a prisoner in the Oklahoma State Penitentiary, McAlester, Oklahoma, and a detainer is filed pursuant to conviction and sentence in this Federal Court. His Federal conviction is on a plea of guilty to Counts Two and Three of a three-count information charging firearms offenses in violation of 18 U.S.C. § 922(a)(6). He was sentenced April 2, 1974, to the maximum period on each count under 18 U.S.C. § 4208(b) for study and report to the Court pursuant to 18 U.S.C. § 4208(c). Thereafter, at definitive sentence on July 24, 1974, the sentence was reduced to five years' imprisonment eligible for parole in the discretion of the Parole Board pursuant to 18 U.S.C. § 4208(a)(2) on Count Two; and on Count Three, imposition of sentence was suspended and the Defendant (Movant herein) was placed on two years' probation to commence upon expiration of the sentence in Count Two. Movant was at all times before the Federal Court on ad prosequendum writ borrowed from the State of Oklahoma, and when definitive sentence was imposed July 24, 1974, he was returned in accordance with said writ to Oklahoma for completion of his State sentence.

In his § 2255 motion, Movant demands his release from custody and as grounds therefor claims that he is being deprived of his liberty in violation of his rights guaranteed by the Constitution of the United States of America. In particular, Movant claims that the sentence imposed April 2, 1974, was the actual sentence of the Court which was suspended by his return to State custody after commencement of the sentence in the Federal Correctional Institution, Oxford, Wisconsin. He contends the Federal authorities lost control over his custody by releasing him to the State authorities and that his Federal sentence has been fully served and he must be released therefrom and the detainer removed.

Having carefully reviewed the motion and file, and being fully advised in the premises, the Court finds that the § 2255 motion is without merit and should be denied without requiring response or an evidentiary hearing. Further, Movant's motion for appointment of counsel should be overruled.

Frequently, a State waives its right to exclusive custody of a state prisoner in order that the United States might try him upon a Federal charge. Then, the Defendant, on a plea of guilty, is sentenced by the Federal District Court and returned to the custody of the State. Thereafter, he is turned over to a United States Marshal by the State authorities and delivered to the warden of the Federal penitentiary, pursuant to commitment under the Federal sentence. The Federal sentence begins to run on such delivery to the United States Marshal. Rohr v. Hudspeth, 105 F.2d 747 (10th Cir. 1939); Lunsford v. Hudspeth, 126 F.2d 653 (10th Cir. 1942). The Interstate Agreement on Detainers Act, 22 O.S.A. § 1345, et seq., was effective October 1, 1977, long after Movant's conviction and sentence in 1974, and the provisions of that Act do not apply herein and have not been considered.

As provided by 18 U.S.C. § 4208(b), "The term of the sentence shall run from date of original commitment under this section." Movant shall receive credit on his Federal sentence for the study period when he starts service of his Federal sentence, but there has been no suspension of sentence that would support the relief under § 2255 he seeks.

IT IS, THEREFORE, ORDERED that the motion for appointment of counsel is overruled and the motion pursuant to 28 U.S.C. § 2255 of Richard Zack Mason be and it is hereby overruled and dismissed.

Dated this 28th day of December, 1978, at Tulsa, Oklahoma.

Allen E. Barrow

CHIEF JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 28 1978

Jack C. Silver, Clerk
U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff-Respondent,	)	
v.	)	NOS. 78-C-357-B
	)	75-CR-21
PAUL WAYNE JACKSON, Defendant-Movant.	)	

O R D E R

The Court has for consideration a motion pursuant to 28 U.S.C. § 2255 of Paul Wayne Jackson. The motion has been assigned civil Case No. 78-C-357 and docketed in his criminal Case No. 75-CR-21.

Having carefully reviewed the motion and file and being fully advised in the premises, the Court finds that upon recommendation of his Probation Officer, and for good cause shown, the Movant has been granted an early termination of probation pursuant to 18 U.S.C. § 5021(b). Thereby, his § 2255 motion is moot and should be overruled.

IT IS, THEREFORE, ORDERED that the motion pursuant to 28 U.S.C. § 2255 of Paul Wayne Jackson be and it is hereby overruled as moot and dismissed.

Dated this 28th day of December, 1978, at Tulsa, Oklahoma.

Allen E. Barrow

CHIEF JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, a foreign insurance corporation, Plaintiff,	)	NO. 78-C-466-B
v.	)	
LAURA SUE BECK, ROBERT F. McGEE, JR., MICHAEL McGEE, a minor sixteen years of age, and CHARLES A. NEWSTROM and MADALINE NEWSTROM, individually and as husband and wife and natural guardians and next of kin of BRIAN K. NEWSTROM, a minor fourteen years of age, deceased, Defendants.	)	

JUDGMENT, ORDER OF DISTRIBUTION AND APPROVAL OF SETTLEMENT

This matter came on for hearing this 28th day of December, 1978, pursuant to the STIPULATION heretofore entered into by all parties and representatives of parties being entitled to share in the proceeds of the fund deposited with the Court in this case and pursuant to the APPLICATION for the distribution of said funds deposited with the Court, this Court makes the following findings:

I.

That this interpleader action was filed by Plaintiff, STATE FARM, and named therein all persons entitled to recover for bodily injuries arising out of an automobile accident that occurred on the 26th day of February, 1978 at approximately 5:25 a.m. at a point on South Lewis Avenue in the City of Tulsa, Tulsa County, Oklahoma, within the Northern District of Oklahoma at or near its intersection with East 56th Place against James Gary French. That this Court, based upon diversity of citizenship and the amount in controversy, did acquire proper jurisdiction of the parties hereto and the subject matter of this litigation under Rule 22, F.R.C.P. and 28 U.S.C. 1331(a), and each Defendant herein was duly and properly served with Summons and a copy of Plaintiff's Complaint; and each Defendant herein has duly and

properly entered their appearance herein by and through their respective attorneys of record.

II.

The Court further finds that the subject matter of this action is the total liability insurance fund, after set-off, remaining and pertaining to personal injury coverage under Plaintiff's policy of liability insurance as set forth in Plaintiff's Complaint.

III.

The Court finds that the only persons having claims against the fund deposited with the Clerk of this Court are those set forth in Plaintiff's Complaint and delineated within the stipulation and application for distribution of funds as filed by the parties herein.

IV.

That the Plaintiff, STATE FARM INSURANCE COMPANY had issued its automobile liability policy number 1401 932 D25 36 to Jimmy French, father and next friend of James Gary French, covering a 1963 Oldsmobile 88 four-door sedan driven by James Gary French upon the date and at the time and place of the above accident; that said policy provided liability insurance limits for personal injury or damages due to wrongful death, and derivative actions with total limits of TWENTY-FIVE THOUSAND DOLLARS ($25,000.00) for any single injury or FIFTY THOUSAND DOLLARS ($50,000.00) for personal injuries to or deaths resulting from or derivative actions as a result of any one accident.

V.

That all parties, both in their individual and in their representative capacities, together with all attorneys of record for the respective parties herein have now agreed and stipulated to the distribution of the fund heretofore paid into the Clerk of this Court at the time of the filing of this interpleader action, and all parties now make application to this Court to approve the distribution of such fund as set forth in the stipulation

for distribution filed by all parties herein; and that all claims filed by each of the Defendants herein be, and the same are hereby dismissed with prejudice to the refiling of same against this Plaintiff upon the entry of this Court's Order awarding the hereinafter stated sums to the designated parties.

VI.

The Court finds that the only parties entitled to distribution of the proceeds of the personal injury liability limits of Plaintiff's policy heretofore paid into court are the following named parties who are entitled to distribution of the proceeds on deposit with the Clerk of this Court, said distributions to be made in the following manner:

A. That Thomas L. Palmer, attorney for Plaintiff, under the circumstances of this interpleader action, is not entitled to an award of attorneys fees from the sum heretofore paid into Court.

B. Defendant LAURA SUE BECK and her attorneys of record Boyd & Parks and Ed Parks, III, in consideration of any and all claims for bodily injury, medical expense, loss of wages and earning capacity, disability, pain and suffering and all damages whatsoever is entitled to the sum of SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS ($17,500.00).

C. That CHARLES A. NEWSTROM and MADALINE NEWSTROM, individually and as parents, natural guardians and sole next of kin of BRIAN K. NEWSTROM, a minor fourteen years of age, deceased, and their attorney of record, John S. Morgan, in consideration of the bodily injury, medical and funeral expenses, conscious pain and suffering, if any, pecuniary loss and any and all damages therein sustained are entitled to the sum of SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS ($17,500.00).

D. That ROBERT F. McGEE, JR., and his attorney of record Jack I. Gaither, in consideration of the bodily injury, medical expense, loss of wages and earning capacity, disability, conscious pain and suffering and all damages whatsoever are entitled to the sum of ELEVEN THOUSAND EIGHT HUNDRED TWELVE DOLLARS AND 70/100 ($11,812.70), after set-offs as set forth in paragraphs IX and X.

E. That ROBERT F. McGEE, SR., individually and as father and next friend of MICHAEL McGEE, and their attorney of record Jack I. Gaither, in consideration of the bodily injuries, medical expense, loss of wages and earning capacity, disability, and conscious pain and suffering, if any, to MICHAEL McGEE, and in consideration of the claim of ROBERT F. McGEE, SR., for any and all derivative claims for the injury to MICHAEL McGEE is entitled to the sum of FIVE HUNDRED DOLLARS ($500.00).

VII.

That in accordance with the Stipulation of the parties hereto and their respective attorneys of record, and in acknowledgment of the agreement of all parties as stated within said Stipulation, and this Court, having received evidence and considered the same, finds that those awards made to and on behalf of all parties, in their individual and representative capacities are reasonable and proper and in the best interests of all parties both in their individual and representative capacities.

VIII.

It is the further finding of this Court that the Clerk of this Court should be and is hereby Ordered to distribute said fund as aforesaid, and that all parties herein, both in their individual and representative capacities are hereby precluded and forever barred from making claim against the bodily injury liability insurance coverage applicable to James Gary French, his parents, agents or representatives as represented by the insurance policy of STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY as described in the Complaint herein which may or might have been payable in any manner or respect by James Gary French or STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY as a result of the automobile accident that occurred on or about the 26th day of February, 1978 at approximately 5:25 a.m., all as set forth in the Complaint herein.

IX.

It is further Ordered that the Defendants herein are liquidating the claims herein by agreement and upon receipt of the funds distributed by this Order are forever barred from executing against, or making further claims against, this Plaintiff STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY as a result of said accident or the insurance policy as described in Plaintiff's Complaint.

DATED this 28th day of December, 1978.

Allen E. Barrow

ALLEN E. BARROW, CHIEF JUDGE
UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

APPROVED:

THOMAS L. PALMER, Attorney for State Farm Mutual Automobile Insurance Company

LAURA SUE BECK

BOYD & PARKS

By
Ed Parks, III, Attorney for Laura Sue Beck

CHARLES A. NEWSTROM

MADALINE NEWSTROM
Individually and as husband and wife, parents and natural guardians and sole surviving next of kin of BRIAN K. NEWSTROM, a minor fourteen years of age, deceased.

JOHN S. MORGAN, Attorney for Charles A. Newstrom and Madaline Newstrom

ROBERT F. McGEE, JR.

ROBERT F. McGEE, SR., father and next friend of MICHAEL McGEE, a minor sixteen years of age.

JACK I. GAITHER, Attorney for Robert F. McGee, Sr., Robert F. McGee, Jr., and Michael McGee, a minor sixteen years of age.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

C. J. REYNOLDS and GLENN BUCKNER, Plaintiffs,	)	
vs.	)	No. 77-C-246-C
DONALD C. BOWDEN and BOWDEN'S FOOD MARKETS, INC., an Oklahoma corporation, Defendants.	)	

JUDGMENT

The Court on December 28, 1978, entered its Findings of Fact and Conclusions of Law which are hereby incorporated herein and made a part of its judgment.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Judgment be entered in favor of the defendants, Donald C. Bowden and Bowden's Food Markets, Inc., and against the plaintiffs, C. J. Reynolds and Glenn Buckner, in light of this Court's Findings of Fact and Conclusions of Law.

It is so Ordered this 28th day of December, 1978.

H. DALE COOK
United States District Judge

L-4924

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

DANIEL FITZSIMMONS, Plaintiff,	)	
vs.	)	NO. 78 C 80 C
JAMES RICHARD HARVEY, OIL CAPITAL TRASH SERVICE, INC., an Oklahoma corporation, RICHARD L. SKEITH and KAR-RENU OF AMERICA, INC., an Oklahoma corporation, Defendants.	)	

JOURNAL ENTRY OF JUDGMENT

On the 11th day of December, 1978, this case came on for trial pursuant to regular jury docket setting. The plaintiff appeared in person, and by and through his attorney, Michael P. Atkinson. The defendant, James Richard Harvey, appeared not, and the defendant, Oil Capital Trash Service, Inc., appeared through Earl Edens and their attorney, Richard D. Gibbon. The defendant Richard Lewis Skeith appeared in person and through his attorney, James Poe. All of the parties litigant announced ready to proceed with the trial through their respective attorneys, and thereafter a jury of six men and women were selected. On that same date, the plaintiff presented evidence until the Court recessed at the normal hour of the day.

On the 12th day of December, 1978, jury trial upon the merits continuing, the plaintiff presented further evidence until approximately 3:50 p.m. in the afternoon, at which time the defendants presented their medical witness out of time, with the Court recessing at approximately 5:15 p.m.

On the 13th day of December, 1978, the plaintiff rested, whereupon the defendants interposed motions for directed verdict and motions to dismiss, which said motions were overruled with exceptions allowed. Thereafter the defendant Skeith rested and the defendants Harvey and Oil Capital Trash Service, Inc., presented evidence and then rested. Whereupon, the plaintiff moved for a directed verdict against all of the defendants, which said motion was denied, exceptions allowed. Both Defendants then moved for directed verdict, which was overruled.

Thereafter, the Court read its instructions to the jury after allowing all of the party litigants an opportunity to make a record on said instructions. Thereafter, the jury returned with the following verdicts:

> "We, the Jury, find for the Plaintiff, Daniel Fitzsimmons, and against the Defendants, James Richard Harvey and Oil Capital Trash Service, Inc., and fix his damages in the amount of $15,000.
>
> /s/ Doug Austen (Foreman)"

"We, the Jury, find for the Defendant, Richard L. Skeith.

/s/ Doug Austen (Foreman)"

The Court received the aforesaid verdict, and concluding they were in proper form, directed that they be filed of record in the case.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED based upon the aforesaid verdicts of the jury, the plaintiff, Daniel Fitzsimmons, is granted judgment against the defendants, James Richard Harvey and Oil Capital Trash Service, Inc., in the amount of $15,000, and prejudgment interest computed at the rate of 6% per annum from the date the complaint was filed, Feburary 21, 1978, which the Court computes to be in the sum of $727.40, plus plaintiff's costs expended herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED based upon the aforesaid verdicts that the defendant, Richard Lewis Skeith, have judgment against the plaintiff, Daniel Fitzsimmons.

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

Michael P. Atkinson
Attorney for the Plaintiff

Richard D. Gibbon
Attorney for the Defendants Harvey
and Oil Capital Trash Service, Inc.,

James Poe
Attorney for the Defendant Skeith

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

ASHLAND OIL, INC., Plaintiff, vs. PHILLIPS PETROLEUM COMPANY, Defendant, and UNITED STATES OF AMERICA, Intervenor.	)	No. 67-C-238

JUDGMENT

Based upon the Memorandum Opinion, including Findings of Fact and Conclusions of Law, filed herein this day,

IT IS ORDERED, ADJUDGED AND DECREED that plaintiff Ashland Oil, Inc., have and recover from defendant Phillips Petroleum Company the amount of $218,244.00, together with interest thereon from this date, as provided by law.

Dated this 28th day of December, 1978.

Luther Bohanon
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

ASHLAND OIL, INC., Plaintiff,	)	
vs.	)	
PHILLIPS PETROLEUM COMPANY, Defendant,	)	No. 67-C-238
and	)	
UNITED STATES OF AMERICA, Intervenor.	)	

Gerald Sawatzky of Foulston, Siefkin, Powers & Eberhardt, Wichita, Kansas; John M. Imel of Martin, Logan, Moyers, Martin & Conway, Tulsa, Oklahoma; and W. O. Strong, III, Ashland Oil, Inc., Houston, Texas, Attorneys for Plaintiff Ashland Oil, Inc.

Don L. Jemison, Phillips Petroleum Company, Bartlesville, Oklahoma; and L. K. Smith of Boone, Ellison & Smith, Tulsa, Oklahoma, Attorneys for Defendant Phillips Petroleum Company.

John E. Lindskold, Dennis A. Dutterer and Andrew F. Walch, Department of Justice, Washington, D. C.; and Hubert H. Bryant, United States Attorney, and Hubert A. Marlow, Assistant United States Attorney, Attorneys for Intervenor United States of America.

MEMORANDUM OPINION

Before LUTHER BOHANON, United States District Judge

Introduction
(See also Findings Nos. 1-13)

Plaintiff Ashland seeks compensation for helium contained in the natural gas stream acquired from plaintiff by defendant Phillips, which was subsequently extracted and sold separately to the United States government. Originally tried in 1973, this case was remanded on appeal to retry controlling factual issues. In the first trial plaintiff and defendants' legal theories and approaches were sufficiently divergent to prevent a joining of issues. Consequently, crucial factual considerations were never fully developed evidentially. At retrial the significant factual matters were developed more fully and thoughtfully than before. Thus, the court must be amenable to discarding earlier erroneous conclusions. The interests of justice, aptly perceived by the circuit court opinion in this case, require no less.

In adjudicating this controversy a second time, the court was assisted by the appellate court's enunciation of certain controlling legal principles. The basic legal relationships among the landowners, producers and gas purchasers were established, notably including the lessee-producer's right to the reasonable value of the contained helium. Northern Natural Gas Company v. Grounds, 441 F.2d 704 (10th Cir. 1971); Ashland Oil, Inc. v. Phillips Petroleum Company (hereafter Ashland v. Phillips), 554 F.2d 381 at 384 (10th Cir. 1975).

The prime responsibility of this court is to determine the reasonable value of the helium herein when commingled at the wellhead with other natural gas. Ashland v. Phillips, supra at 385-386. Such "value" is basically a factual matter to be ascertained through application of the appropriate legal doctrines. Ashland v. Phillips, supra at 385. Optimally, a product's "fair market value" is determinable by examining comparable sales of the same product. Ashland v. Phillips, supra at 387. Significantly, some sales of commingled helium offered in evidence here were too remote in time, and otherwise incomparable, to be relied on solely.

The "Work-Back" Method

The next best approach is the "work-back" or "value less expense" method whereby a raw material's value is extrapolated by using as a starting point an end product of that material whose value is certain. The costs of transforming the raw material from the stage where its value is unknown to that where its value is certain are subtracted from the starting value to reveal the value being sought.

> "The work-back valuation is well recognized in the production and early processing of natural gas. . . . There is nothing unusual about the method, it is subject to proof, and can be just as accurate as any other method, but it is more difficult to apply." Ashland v. Phillips, supra at 387.

Effective application of this method requires selection of an appropriate starting value in the form of a processing stage whose product possesses a value certain; accurate assessment of the costs accruing between the known stage and the one in question is also essential. In developing a resource from a raw material into a finished product, each production stage will add economic value to what was initially only the value of the raw material. The value added at each stage of production is essentially the cost of resources used in taking the material through that stage of production. The work-back method essentially establishes at each production stage the value of the product at that point. By subtracting out all production costs, the value of the raw material is revealed.[1/] Application of this approach, however, can be difficult. Market structures vary at different production stages and correlating figures from one stage to the next can require abstruse analytical calculations, easily resulting in error. The selected starting point should be as close as possible to the production stage in question.[2/]

With these theoretical considerations in mind, two potentially viable starting points emerge. One is helium in its crude

form; the other is helium in its pure Grade A refined form, the starting point initially adopted by this court.

Refined Helium Market
(See also Findings Nos. 14-18)

If one fact has clearly emerged at retrial, it is the inappropriateness of using refined helium prices as a starting value in extrapolating commingled helium's value at the wellhead.

Possession of a production phase where the raw material has been processed to a point of possessing a value certain is crucial to the work-back method, whose efficacy is based on employing known data to extrapolate the unknown. Refined helium prices for the time period relevant to this case were not only distorted by monopolistic market conditions which prevented pure helium's prices from reflecting the product's "fair market value," but even more significantly there was never any relationship whatsoever established between the commingled helium in this case and any refined helium market.

All of the commingled helium in this case was processed into crude helium and placed in underground storage by the government, where it remains today. None has been refined into Grade A helium.[3/] It was acquired with conservational intent and for consumption at some undetermined future time. Any suggestion that the helium in this case could have been refined and subsequently sold at then prevailing market prices of $20 to $35 per Mcf is at variance with what the most persuasive evidence before this court demonstrates to be the truth.[4/]

Refined helium prices during the period in question consistently were distorted by effects of a monopolistic seller's market and never were determined by free and open competition. Government prices based on long-term policy considerations completely dominated the market in the initial years significant to this case, and were influential throughout the entire course of the pertinent time period.

Introduction into the refined helium market of even a small percentage of the large helium quantities at issue here would have plummeted prices industry-wide, not only because any reasonable competition would have constituted an effective assault on the then prevailing artificially high price structure, but also due to the relatively inelastic helium demand at the time. Only a small number of end uses for refined helium exist, and those end uses can absorb only limited quantities of refined helium.[5/] When a product is available in quantities greatly exceeding anything the market requires or can absorb, the excess amount is worth very little and will tend to severely depress prices, as competition forces sellers to unload their product for virtually anything they can get.[6/]

Large quantities of crude helium were produced and sold in the United States during the years in question. In comparison, very small quantities of refined helium were bought and sold. In light of the inelasticity of demand for refined helium, and the marked disparity volume-wise between crude and refined helium, the best evidence indicates that a 1 percent increase in the refinement of available crude helium would have led to a drop in refined helium prices of at least 5 percent, and possibly in excess of 9 percent, depending on the year chosen.[7/] Introduction of a large quantity of such helium into the market would have driven the price down to near zero.[8/]

The salient fact questions herein can in no manner be resolved by reference to the refined helium market. The helium here was never refined, and it never influenced or was affected by any refined market. Simply stated, in this case refined helium prices represent an inappropriate and unsatisfactory starting point for application of the work-back method. The best evidence repeatedly emphasizes the ineffectiveness of attempting to infer the value of large quantities of crude or commingled helium, based upon the relatively small number of refined helium market transactions.[9/]

Crude Helium Market
(See also Finding No. 19)

The other potential starting point for application of the work-back method is the crude helium market. It represents the first processing stage at which helium per se is freely marketed and the first form into which commingled helium is separated. The close proximity of the two stages makes work-back calculations easier and more reliable. During the relevant years, crude helium production was much more comparable in quantity to commingled helium production than was refined helium production, and all the helium at issue was sold and maintained in crude helium form. The crude helium market was by far the largest helium market existent during the pertinent ten year period. Beginning the work-back method here would allow us to make computations on the basis of events and transactions which actually occurred, and would minimize the need for speculation of the type refined helium figures require.

Supply and demand characteristics of the crude helium market were similar in size and structure to those which would have attended a commingled helium market if one had been independently identifiable, and the comparability of these economic factors makes comparisons between the commingled and crude stages much more realistic than comparisons with the refined stage.

Several factors made crude helium prices more representative of helium's fair market value at that level than pure helium prices were at the refined level. When the conservation program was initiated, a great many potential sellers received notice from the government of its intention to buy crude helium, and some 13 or 14 companies expressed interest in contracting as crude helium suppliers. The contracts which finally emerged, including Phillips' contract, followed extensive "good faith" and "arm's length" negotiations. The price paid for crude helium to the "Helex" companies, including Phillips, averaged about $12 per Mcf. While the evidence reveals that the crude helium market was not a perfectly competitive market

in the classical economic sense, throughout most of the relevant period there were at least four sellers in the market, dealing at prices freely negotiated, and substantial amounts of crude helium were exchanged within a fairly narrow range of prices.[10/] This market was at least imperfectly competitive and significantly more competitive than the refined market. A rather well developed crude helium market existed, then, during the time period relevant here, generally operating within a price range of $11.00 to $14.00.

Phillips Contract Price

Since the evidence of both Ashland and defendant Phillips offers work-back calculations based on Phillips' actual extraction costs, employing Phillips' actual contract price as a starting value would be ideal if shown to represent a fair and reasonable price for crude helium.[11/] The Phillips contract was one of four negotiated with the four "Helex" companies and, like the others, resulted from extensive "arms length" negotiations. The court is now persuaded that Phillips' contract price of approximately $10.30 per Mcf represented a fundamentally fair and reasonable price for crude helium. This contrasts with the first trial, wherein the evidence demonstrated no relationship between the negotiated contract price and the fair market value of the helium. See Ashland v. Phillips, supra at 384.

Ashland's argument that the contract figure did not represent the full and complete helium "price," due to the contract's indemnity clause, is persuasive on its face but was shown at retrial to be factually unsound. At issue is contractual provision 7.4 of the Phillips contract, wherein the government agreed to indemnify Phillips for amounts in excess of $3.00 paid to third parties for their helium ownership rights. Such provision implies that the complete crude helium price was contemplated to be the base figure of approximately $10.30 plus additional payments required by third party ownership interests. The evidence now establishes that the

base figure was considered by the parties to be the full and complete price for the curde helium and that it, in fact, constituted a fair and reasonable price. Phillips' negotiators had been advised by legal counsel that Phillips possessed sole and complete title to all of the contracted helium. Phillips was willing to so warrant its title and was intent on negotiating a contract price reflecting the full and complete value of the crude helium. Approximately half of the helium Phillips contracted to sell was produced from its own gas wells and indisputably belonged to Phillips, and the base contract figure unquestionably represented full payment as to this one-half.[12/] Significantly, the indemnification clause was never requested by Phillips, and was never a focal point of negotiations, but was merely inserted at the government's behest to provide continuity with previously negotiated contracts containing the same clause.

Ashland's contentions that the negotiated contract price was depressed by the potential threat of government condemnation of the helium is not supported by the record. The negotiated price essentially represented that dollar figure necessary to induce Phillips to bring forth the amount of crude helium the government wanted to purchase from Phillips.[13/] Any evidence indicating a variance between the contract price and the helium's worth would seem to indicate that perhaps the price was slightly too high, since Phillips' bid was accepted for reasons influenced by conservation considerations even though slightly higher than one of its competitors.

Processing Costs
(See also Findings Nos. 25-31)

In computing a cost figure to be applied in the work-back method, this court was directed on remand to receive further evidence on, inter alia, the appropriate amount chargeable to costs as a return on investment and the amount of helium plant expense

properly allocable to production of hydrocarbons and thus not properly chargeable to costs. Having determined that a 15 percent rate of return on investment is appropriate for reasons detailed in the court's attendant findings of fact, and having adjusted the cost figures to allow for hydrocarbon expenses, the court has examined computations based on crude helium values, including Phillips' contract price, in comparison with Phillips' actual costs. The court believes that the fair market value of Ashland's helium at the crude helium stage was in the vicinity of $10.50 to $12.00 per Mcf. Phillips' actual extraction costs during this period averaged out between $6.50 and $7.00 per Mcf at Sherman, and slightly in excess of $10.00 per Mcf at Dumas. Selecting a range of costs between $6.50 and $8.00 per Mcf as being fair, the work-back method reveals that Ashland's recovery should be between $2.50 and $5.50 per Mcf.

Exact Computations

No automatic and exact solution to the problem of valuing commingled helium simplistically emerges from application of the work-back method to the relevant data. A rigid statistical approach preoccupied with mathematical precision would generate rather widely differing values for different "shipments" of commingled helium, depending upon the year of production and the processing plant utilized.[14/] Even then such precision could be attained only by delineating an artificially exact crude helium value as a starting point.

The exact contract price between Phillips and the government varied from year to year and plant to plant. The $10.30 price referred to earlier is less expressive of a precise crude helium value than it is of a figure located within a reasonable range of crude helium values. The work-back method reveals only that the commingled helium in this case should be valued somewhere between

$2.50 and $5.50 per Mcf, depending upon the comparative weight assigned to the various relevant statistics.

Quantum Meruit

Recovery in this case rests upon the doctrine of "quantum" meruit," wherein the law implies an agreement and allows recovery of "what is reasonable" and what one "reasonably deserves" for benefits conferred in the absence of an express contract. Brown v. Wrightsman, 175 Okla. 189, 51 P.2d 761, 763 (1935) "Quantum meruit" applies where actual contractual intent and mutual assent by the parties is lacking; compensation is afforded based upon reason and justice. Hillyer v. Pan American Petroleum Corporation, 225 F.Supp. 425 (N.D. Okla. 1963). This rule of law stresses the inequity of a party refusing to pay for benefits received knowingly and with consent, from someone lawfully authorized to expect remuneration therefor. Kramer v. Wilson, 226 S.W.2d 675 (Tex. 1950); Parks v. Kelley, 147 S.W.2d 821 (Tex. 1941).

Fair Market Value
(See also Findings Nos. 32-35)

The economic value of commingled helium is not as high as evidence at the first trial led the court to believe. It is not, on the other hand, inconsequential. The circuit court of appeals has correctly emphasized that helium has value by reason of its nature and usefulness, and that the government's conservation program may have preserved such value and made it available, but it did not create such. Ashland v. Phillips, supra at 389.

Significantly, however, the evidence at retrial established that helium's uses are limited and its demand is relatively small. This helium demand consistently has been dwarfed by the size of potential supplies. During the period of the helium conservation program and in the years immediately thereafter (1963-1977), only about 40 percent of the helium produced in helium-rich natural gas

was recovered. Since the conservation program was completed, approximately 80 to 90 percent of the helium produced from the major helium-rich gas fields has been discarded at the wellhead and allowed to escape to the atmosphere due to the absence of a viable market.

Even in 1968, during the peak of the helium conservation program, 8.36 billion cubic feet of helium was produced in natural gas, but only 4.59 billion cubic feet was recovered. 3.77 billion cubic feet was vented into the air.

Over 188 billion cubic feet of commingled helium in proved probable reserves of helium-rich gas (containing 0.3 percent helium or more) had been identified as of 1977. An additional 171 billion cubic feet of helium commingled in reserves of less-rich natural gas (containing less than 0.3 percent helium) has been identified. This reserve total of 359 billion cubic feet of commingled helium compares with helium consumption in 1977 totalling 0.9 billion cubic feet.[15/]

The helium owners in this case were fortunate that their helium was selected to be conserved. Most of the nation's helium owners possessed no opportunity to sell at any price and received no compensation whatsoever for their helium. While plaintiffs are entitled to "reasonable compensation," this amount must fairly equate with the helium's "fair market value."

A market exists wherever two or more parties contact one another to engage an exchange, and where the parties agree on the terms thereof. The "fair market value" of an item is reflected in the price at which both buyers and sellers are willing to engage an exchange, and the price at which neither shortages nor surpluses will occur. It is the price at which sellers are induced to bring to market those quantities that buyers are willing to buy at that price. Normally, for a "market" and a "fair market value" to exist,

the market price must be sufficient to cover costs of production and a normal profit to the sellers.[16/]

Henry P. Wheeler, Jr., former Bureau of Mines employee in charge of the helium conservation program, and the government negotiator with the Helex companies, testified that the government could have purchased all of the commingled helium it desired for $2.00 per Mcf.[17/] This analysis is generally supported by the record, including evidence of market conditions existent at the time.

In negotiating with Helex companies, government negotiations employed a "work-up" method to value the commingled helium. Similar in principle to the "work-back" method, this approach added cost increments to a selected wellhead starting value in order to arrive at the crude helium's reasonable value. This "work-up" method, whose results provided the bases for the resulting contracts, was predicated on the use of a $2.00 per Mcf value for helium at the wellhead. (See Phillips' Exhibit 71). Dr. Leo Garwin, plaintiff's own expert witness, recognized commingled helium's value during the years in question as being between $2.00 and $3.00.[18/] Also, at least one 1966 sale between private parties utilized a $2.00 per Mcf Price.[19/]

Plaintiff's efforts to predict an eventual high economic value for helium possess little dependability or relevance to this case's issues. Estimates of future demand for most commodities, including helium, are less than reliable.[20/] In any event, plaintiff's measure of recovery is tied to commingled helium's value as computed at the time of Phillips' sale. Speculation portends that exorbitant prices may eventually attach to such natural resources as land, water, wood and perhaps even clean air, yet their present economic value is governed by present availability rather than potential future scarcity.

A full and careful review of the record in this case reveals a myriad of considerations relevant to an appropriate valuation of Ashland's helium commingled at the wellhead, none of which, however, individually establish an exact dollar figure. The full range of reasonable values disclosed by the proper application of "work-back" methodology, the structure and salient economic factors of the various helium markets during the period in question, the expert testimony of record, and the equitable considerations collectively suggest that the reasonable value of the commingled helium in this case is between $2.00 and $3.00 per Mcf regardless of the year of production or the extraction plant utilized.

This determination, and the bases therefor, are hereinafter detailed.

In addition to the findings and conclusions in the preceding text, and by way of elaboration thereon, the court delineates the following:

FINDINGS OF FACT

Introduction

1. Helium is an unusual element; it is a gas which is inert and noncombustible and is the second lightest known element. Helium is so inert that it will not chemically react or combine with other elements and thus remains as helium forever. It is tasteless, colorless, odorless and invisible. For a more complete description of helium, its unusual characteristics, its uses, and where found, etc., see Northern Natural Gas Co. v. Grounds, supra and in the opinion of U. S. District Judge Wesley E. Brown, 292 F. Supp. 619 (D.C. Kan., 1968).

2. In the 1940's, the United States Bureau of Mines was the sole producer of helium in the nation, and it purchased commingled helium in the pipeline at the same price as the natural gas itself, ranging from 5 to 8 cents per Mcf.[21/] In the late 1950's the Bureau of Mines purchased helium contained in natural gas in the pipeline for its Keyes plant operation at the price of approximately $2.00 per Mcf contained helium; the Bureau of Mines was willing to pay a premium price for the gas because of the high helium content (2.0 percent rather than 0.5 percent contained helium) which resulted in savings in production costs.

3. Pursuant to the authority granted by Congress in the Helium Act Amendments of 1960 (50 U.S.C. §167 et seq.), the United States entered into long-term crude helium purchase contracts with four companies, the "Helex" companies, to construct plants for the extraction of helium from natural gas streams being produced from the Hugoton-Panhandle area. Each of the contracts was executed on a different date, had three different initial unit prices per Mcf

during each year of the contract for the life of the contract. The maximum annual obligation for each contract was different under the limitations imposed by Congress, i.e., only the sum of $47.5 million could be expended annually to buy helium under the Government's program to conserve helium. A summary of the contracts is set forth in Table 1 below:

TABLE 1

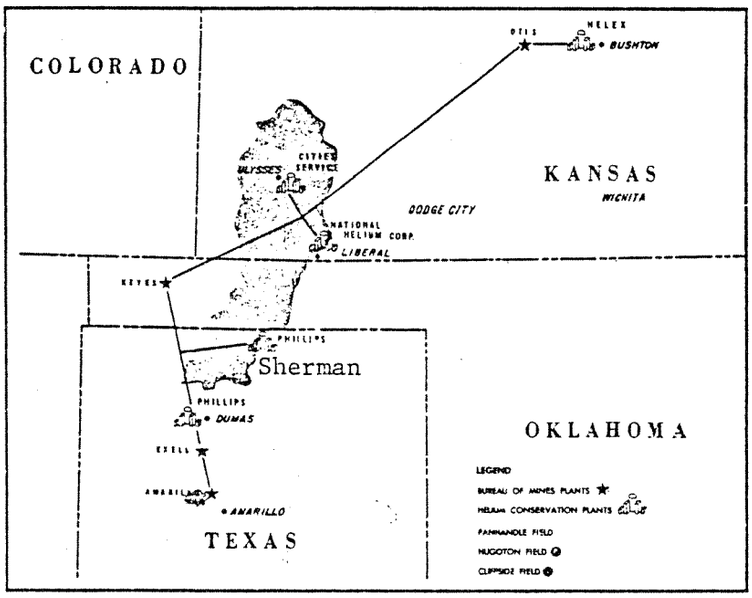
SUMMARY OF HELIUM CONSERVATION CONTRACTS

Company	Plant Location and Date of Contract	Initial Unit Price (for 1,000 cubic feet)	Maximum Annual Obligation (million dollars)	Estimated Helium Volume (million cubic feet) Annual Average	Estimated Helium Volume (million cubic feet) Life of Contract
Northern Helex Company	Bushton, Kansas 8-15-61	$11.24	$9.5	675	13,500
Cities Service Helex, Inc.	Ulysses, Kansas 8-22-61	11.78	9.1	610	12.200
National Helium Corp.	Liberal, Kansas 10-31-61	11.78	15.2	1,053	21,060
Phillips Petroleum Company	Dumas, Texas) and) Sherman Co.,) Texas 11-13-61	2 plants 10.30	13.5	788	15,766
Weighted average -- $11.29					
TOTAL			$47.5	3,126	62,526

4. In addition to Phillips Petroleum Company, the last of the Helex companies to enter into a conservation contract with the United States, agreements for the purchase of crude helium were reached with National Helium Corp., Cities Service Helex, Inc., and the Helex Company (later Northern Helex Company).

5. The crude helium conservation system consists of 5 privately owned crude helium production plants, a main pipeline running from Bushtown Plant in Kansas to the storage site at the Cliffside field in Texas and lateral pipelines running from the main pipeline to

certain Grade A helium production plants. Three of the conservation plants are located in Kansas: the Bushtown Plant of Northern Helex, the Jay Hawk Plant of City Service Helex and the Liberal Plants of National Helium. The plants at Sherman and Dumas, Texas, belong to Phillips Petroleum.



ESSENTIAL LINK in the nation's helium conservation program is a 353-mile pipeline constructed by the federal government in 1962 and connecting five privately owned and four government-operated extraction plants to an underground storage area in the Cliffside field near Amarillo, Tex.

6. Under the terms of its contract of November 13, 1961, Phillips agreed to sell the United States a helium gas mixture from two plants it proposed to build at Sherman and Dumas, Texas. The plants were constructed to extract for delivery and sale to the government, per the contractual terms, a helium gas mixture (crude helium) of at least 50 percent helium, with the remainder being essentially nitrogen. The nominal capacity for production of crude helium for the Sherman and Dumas plants was 360,000 Mcf per year and 428,000 Mcf per year, respectively. Production began at the Sherman plant in December, 1962, and at the Dumas plant in April, 1963.

7. Three private plants which in 1978 were producing Grade A helium from crude helium, are connected to the helium conservation system by way of private pipelines. These are the plants of Kansas Refined Helium Company, City Service Cryogenics and the Alamo Chemical and Gardener Cryogenics plants, all in Kansas. Of the three Bureau of Mines plants in the conservation system, only the Keyes plant in Oklahoma is still producing Grade A helium from a crude helium stock. The Excell plant and Amarillo plant in Texas are no longer producing Grade A helium for the Bureau of Mines, but are now used to control the pressure in the helium storage reservoir (Excell) and to liquify helium (Amarillo).

8. Other relatively small capacity private plants producing Grade A helium, which are not connected by pipeline to the conservation system, are Linde Division of Union Carbide in Kansas and the Navajo plant of Western Helium Corporation in New Mexico.

9. Helium storage exists in both the pipeline system and the storage system reservoir at Cliffside. Once crude helium enters into the pipeline system, it is considered in storage and unless dedicated to fulfilling the requirements of the conservation contract is freely transferable from the Helex Company plant owners to the owners of the private Grade A helium producing plants.

10. A total of 33,760,506 Mcf of crude helium was acquired by the United States under the conservation program. Under the contracts, this helium was priced at $405,049,136.89, an average price of $12.03 per Mcf as shown in Table 2 below:

TABLE 2

HELIUM CONSERVATION CONTRACTS SUMMARY

Company	Amount $	Volume Mcf	Average Price $/Mcf
Northern Helex Co.	$ 51,864.201.12	4,475,921	$11.5874
Cities Service Helex, Inc.	84,719,570.87	6,720,927	12.6053
National Helium Corp.	154,775,285.89	12,217,628	12.6682
Phillips Petroleum Co.	113,690,079.01	10,256,030	11,0852
TOTAL	$405,049,136.89	33,670,506	$12.0298

11. Of these amounts, Phillips conveyed to the United States 10,256,030 Mcf of helium, priced under the contract at $113,690,079.01, an average of $11.0852 per Mcf.

12. At the time of termination in 1973, the government had approximately 35 billion cubic feet of helium in storage in the Cliffside Field in Texas, and it was estimated that about four billion cubic feet of helium was contained in the government-owned native gas in that field. It was also estimated that approximately 5.5 billion cubic feet of helium would be recovered in the Keyes plant under its natural gas supply agreement. This assured the government a supply of 44.5 billion cubic feet of helium. As a result, the Secretary of the Interior found on February 2, 1973, that the objective of the Helium Act had been met. The objectives were to

> "foster and encourage individual enterprise in the development and distribution of supplies of helium, and at the same time provide, within economic limits . . . a sustained supply of helium which, together with supplies available or expected to become available otherwise, will be sufficient to provide for essential government activities." 50 U.S.C. 167m.

13. Approximately 42.8 billion cubic feet of helium is presently stored in Cliffside. Of this 42.8 billion, 32.2 billion was purchased under the helium conservation contracts; 1.5 billion was accepted in storage under court order; 3.5 billion was produced at Bureau of Mines plants; and 4.0 billion is contained in native gas. All of the approximately 34 billion cubic feet of helium acquired under the conservation program remains in storage at Cliffside. Assuming that the 34 billion cubic feet obtained from the conservation companies was worth $10 per Mcf, the government has an investment in the helium stored at Cliffside of $340 million. Assuming, again, that the invested money could draw 10 percent interest a year if properly invested, the United States is paying at least $34 million a year in interest to keep the helium in storage. The storage cost is about the largest cost item associated with the helium acquired under the conservation program.

Refined Helium Market

14. No relationship exists between Grade A helium prices and either the crude helium sold by Phillips to the United States or the crude helium sold to the United States pursuant to any other conservation contracts. All such crude helium was placed in underground storage by the government and so remains. None has been refined into Grade A helium. It was not produced to supply current demands, but was produced to be saved and not wasted when the helium-bearing natural gas went to market. It is not known when the stored crude helium will be used; the purpose for which it will be used; nor the price at which it will be sold.

15. During the ten years involved in this case, approximately 92 billion cubic feet of helium was produced at the wellhead; 48 billion cubic feet of helium was not recovered, but instead was wasted into the atmosphere as the natural gas containing such helium was marketed. 44 billion cubic feet of helium was recovered in the United States, all of which was initially recovered as crude helium. Of this amount, 36 billion cubic feet was placed in underground storage by the government and remains there at this time. Of this 36 billion cubic feet in storage, 34 billion cubic feet represents all the crude helium sold by Phillips and the other conservation companies to the government. Of the 44 billion cubic feet of helium extracted and saved, only 8 billion cubic feet was refined into Grade A helium and only approximately 3.3 billion cubic feet was sold to private customers during the years in question. It is now clear that it would be improper to attempt to value the 34 billion cubic feet of conservation curde helium in storage by any price the 3.3 billion cubic feet of refined helium may have sold for. To do so would require the assumption that all of the 34 billion cubic feet of stored crude helium could have been refined and sold in the Grade A market. It is clear that such could not have been done without drastically reducing the price of Grade A helium.

16. The prices paid for Grade A helium during 1963 through 1972 are not sufficiently reliable as indications of value to serve as a starting point. It is uncontroverted that the government's 1961 price of $35.00 was adopted for the express purpose of creating sufficient income from government sales of refined helium to pay Phillips and the other conservation companies for the crude helium they were selling the government for storage, as well as to pay all other expenses associated with the storage program. Previous to that price, the government was selling Grade A helium to government users at $15.50 per Mcf and to private users at $19.00 per Mcf. The $35.00 price was never intended to represent a fair market value for helium. Nonetheless, the $35.00 price was the only price available during all of 1963, 1964, 1965 and a substantial portion of 1966. During those years there was only one other seller of Grade A helium (Kerr McGee), and one of Ashland's witnesses, then an employee of Kerr McGee, affirmed that Kerr McGee purposely fixed its price to be equal to the posted government prices - whatever they might be - so that whatever the government price was, the Kerr McGee price was also. The helium the government sold during the ten years involved herein was produced by the government itself and was not purchased from the Helex companies.

17. After 1966 there was little stability of Grade A prices. Although Grade A helium producers began operations in 1966 through 1968 and the prices which they charged were significantly less than $35.00 per Mcf, there was no particular proximity of prices. One seller of Grade A helium in 1966 (Kansas Refined Helium) sold its product for an average price of $16.37 per Mcf and in 1967 for $17.68 per Mcf. At the same time other sellers in 1967 were selling the same product for $25.57 and $35.00 per Mcf. A former Kerr McGee employee testified that he was personally familiar with an attempt to sell Grade A helium at $15.00 per Mcf

in 1967. Weighted average Grade A helium prices charged by private parties f.o.b. the plant decreased from $25.39 per Mcf in 1966 to $20.21 in 1972, although Kerr McGee reduced its posted price to $19.00 in 1969 and maintained such until April 25, 1972.

18. During the 1962-1972 period the volume of Grade A refined helium sales varied substantially; sales of 611,000 Mcf in 1962 rose to 929,000 Mcf in 1969 and then steadily fell to 580,000 Mcf in 1972. As private companies began producing Grade A helium, the government's share of the commercial market continuously decreased from a high of about 135,600 Mcf in 1962 to a low of 6,279 Mcf in 1972.

Crude Helium Market

19. There is now, and was at all times since the commencement of the conservation contracts, a market for crude helium. This market consists of all crude helium sold to the government for storage purposes under the Helium Conservation Act, as well as all sales and purchases between private parties, all within a fairly narrow range of prices. Phillips' Exhibits 43, 44 and 45 describe the details of very substantial crude helium exchanges. Exhibit 43 reflects that the government purchased, between 1963 and 1972, approximately 31,400,000 Mcf of contained helium. Private parties exchanged more than 675,000 Mcf in just slightly more than six years beginning in late 1966 and ending in 1972, and approximately 686,000 Mcf in the three years thereafter. The crude helium market was by far the largest helium market in existence during the ten years herein. Numerous witnesses, including representatives of many of the purchasers and sellers of crude helium, testified that a well defined market for crude helium existed. The president of National Helium stated that a crude helium market existed and continues to exist, as did the vice president of Northern Helex. Similar expressions were received from representatives of Cities

Service and Kansas Refined Helium, crude helium's largest private purchaser. Each testified extensively regarding the circumstances of each sale, the volumes sold, the prices received and the contract terms generally.

Phillips Contract Price

20. In the original trial of this case very little evidence was offered describing the negotiations which led to the contracts above-mentioned and, particularly, to the contract of November 13, 1961, between Phillips and the United States, and no relationship between the contract prices and any then existing markets or market values was developed of record. Credible written and oral evidence of these matters is now before the court.

21. As previously mentioned, the Phillips contract, which was the last of the four contracts to be negotiated with the Helex companies, resulted from intense negotiations between Mr. Henry Wheeler, the former Director of the Helium Conservation Program, representing the United States, and officials of Phillips Petroleum Company. Funds were available for only one more conservation contract with a crude helium producing company; and two companies, Phillips and Colorado Interstate, were both interested in acquiring a government contract. During negotiations with Phillips, Mr. Wheeler negotiated the price downward to $10.30 Mcf. Meanwhile, Colorado Interstate had offered to convey crude helium to the government at a price of $10.10 per Mcf. Despite the small price advantage offered by Colorado Interstate, Mr. Wheeler selected Phillips Petroleum because by doing so a greater volume of helium would be conserved.

22. Article 7.4 of the Phillips' contract provided that the United States would indemnify Phillips for any amount over approximately $3.00 per Mcf which Phillips might be required to pay third parties for acquisition of the commingled helium. Phillips had not requested that this indemnification be placed in the contract.

Mr. Henry Wheeler testified that the clause was included so that the government would be treating all of the contractors alike. The testimony of Mr. Wheeler and Mr. Cullender, a member of the Phillips team that negotiated the contract, and the deposition of Mr. Wilson, the negotiator for National Helium, all established that Article 7.4 had no influence whatsoever on the price the United States paid for crude helium. The evidence reflects that Phillips believed it had title to the helium when it entered into the contract, that it did not request the indemnity provision, and in fact, did not consider its effect.[22/]

Originally, Phillips had submitted a written proposal of $11.48 per Mcf wherein it offered to warrant its title. The government rejected such offer because it thought the price too high. The government countered with its own proposed contract, suggesting a figure of approximately $10.30 per Mcf. Such proposal contained no provision for title warranty by Phillips, but instead included the government indemnity clause discussed earlier. Neither side's actions evidenced a belief that the title question raised any issue of serious economic import.

23. The $10.30 price in the Phillips contract, adjusted only by the price index provision in paragraph 7.3, was deemed by both Phillips and the government as the complete price and value of the crude helium. The indemnity provision was not deemed or intended by either as part of the purchase price. Similarly, the National Helium negotiator testified that in his opinion the contract price agreed between the government and National Helium was exactly representative of the crude helium's value at the time of the execution of the contract.

In addition, the United States' power of condemnation does not appear to have been a factor in the negotiation of the conservation contracts, since use of such power was neither threatened nor suggested. Phillips' concern was not that the United States

would seek to condemn the helium, but, rather, that the United States would enter into a contract with some other party for the purchase of crude helium and thereby deny Phillips the opportunity to sell its helium to the United States.

24. As noted above, in 1966 several sales of substantial quantities of crude helium occurred between private parties, and sales continued to be made during all the years in question. In all instances the sellers sold the crude helium for prices comparable to those set forth in the conservation contracts and at least four substantial sales between 1967 and 1972 involved full title warranty by the seller. These sales with full title warranty strongly indicate that the conservation contract prices were not unduly low and were not forced downward by the presence of the indemnification clauses. The indemnification clauses caused no one to undervalue the helium.

Processing Costs

25. Effective application of the work-back method requires that the proper costs be deducted from the proper starting value. In this case the relevant costs are all helium plant expenses allocable to helium production, plus an appropriate return on the amount of capital employed in such production.

26. Disputes between the parties on "cost" issues include disagreements as to the amount of plant expenses allocable to helium, the amount of capital allocable to helium, the rate of return to be allowed and whether in calculating this rate of return there should be included a sum sufficient to cover income taxes.

27. Phillips' accounting witness utilized essentially the same "capital employed" and plant expenses used by Ashland's accounting witness but made certain adjustments thereto. These adjustments to "capital employed" entailed:

(a) an increase in the amount of working capital based on Phillips' actual working capital;

(b) provision of a return on deferred testing (start-up) costs which were amortized over the life of the contract;

(c) inclusion of accounts receivable Phillips was required to finance and for which there was no provision for interest.

These changes reflect an accurate and appropriate approach in this case for computing "capital employed."

Ashland has never complained that Phillips was an inefficient helium extractor and in fact the evidence is quite to the contrary. Therefore, there is no justification for plaintiff's suggested approach of using Phillips' actual costs in some instances, while applying a formula for determining working capital when Phillips' actual working capital appears to plaintiff to be larger than needed.

28. Determination of the return rate properly allowable to Phillips involves ascertainment of the return rate necessary at the time to induce Phillips' management to make the initial investment. Each of the experts testifying on the return issue for Phillips and the government was actually engaged during the period in question in the investment decision-making process of substantial corporations, and each testified that the minimum rate of return necessary to have caused a knowledgeable investor to make the investment made by Phillips was 15 percent after taxes. The testimony of Phillips' employees fully supports this conclusion.

The court finds that the prospect of a 15 percent after-tax return was required to induce Phillips or any other knowledgeable investor to enter into the contract involved here. Phillips' helium plant costs should, therefore, include such a return.

29. To effect the appropriate after-tax return, monies paid in income taxes should be included as a cost item. Failure

to include income taxes would, under the work-back method of valuation, place too high a value on the helium at the wellhead.

30. The issue of expenses properly allocable to hydrocarbon production results from the fact that helium plant operations concentrate liquefiable hydrocarbons contained in the natural gas processed at the helium plants. These concentrated liquefiable hydrocarbons leave the helium plant in what is termed the "rich gas stream," which then enters a gasoline plant where further processing and extraction of liquefiable hydrocarbons occurs. The efficiency of the gasoline plant is improved by the helium plant's concentration of the liquefiable hydrocarbons.[23/]

31. The court finds that allocation of helium plant expenses to the production of hydrocarbons should be based on the "functional cost benefit method" proposed by Phillips. Helium plant investment and expenses should be allocated between crude helium production and production of the rich gas stream. Phillips' method of allocation results in an allocation of helium plant costs on an equitable basis and in a logical manner. The incremental liquids credit proposed by Ashland is subject to various compelling criticisms, both as to the basis for its calculations and its potentially inequitable results.

Fair Market Value

32. In 1977, of the total 6.92 billion cubic feet of commingled helium produced, a mere 1.38 billion cubic feet was recovered. This small recovery results from helium's market demand being tremendously overmatched by available supplies. For example, even though cheap storage of helium is available at Cliffside, Cities Service Helex, one of the companies with the existing capacity to recover helium, is simply venting it to the atmosphere despite being connected to the conservation system. Neither the National Helium plant at Liberal nor the Phillips-Dumas plant are producing crude helium for storage.

33. In excess of 188 billion cubic feet of contained helium in proved or probable reserves of helium-rich gas (containing 0.3 percent helium or more) had been identified as of 1977. Of that 188 billion cubic feet, 105 billion cubic feet is in non-depleting reserves, i.e., it is either in storage at Cliffside or is contained in natural gas of a low heating value which is not being produced.

34. A $2.00 per Mcf price for commingled helium was used by the Bureau of Mines in computing the price it was willing to pay under the helium conservation program. The four Helex companies in good faith believed that they owned the helium contained in the natural gas and accepted $2.00 per Mcf as the value of the commingled helium.

35. Dr. Leo Garwin, witness for Ashland, authored an article published in the April, 1969, issue of "Hydrocarbon Processing," wherein he stated that the helium content in natural gas "is normally worth between $2.00 and $3.00 per Mcf. Similarly, in a letter dated September 12, 1969, to the Chairman of the House Committee on Interior and Insular Affairs, Dr. Garwin referred to the value of helium contained in natural gas as $2.00 to $3.00 per Mcf; and in 1967 Dr. Garwin testified on behalf of Ashland at an arbitration proceeding that the value of helium contained in natural gas owned by Ashland was $2.35 per Mcf.[24/]

CONCLUSIONS OF LAW

1. This court's responsibilities and duties on remand are set forth in the appellate opinion in this case rendered subsequent to the first trial. Ashland v. Phillips, 554 F.2d 381 (10th Cir. 1975).

2. Ashland's suit for the reasonable value of the helium in controversy here is, in effect, an action in quantum meruit. See Phillips Petroleum Co. v. Texaco, Inc. 415 U.S. 125 (1974).

3. The court of Civil Appeals for the State of Texas, the state where this action was commenced, has observed:

> "quantum meruit, [is] a creature of equity, . . ." University State Bank v. Gifford-Mill Const. Corp., 431 S.W.2d 561 (Tx. Ct. Civil Appeals 1968).

That court has further held that quantum meruit actions "rest their holdings upon equity and justice" and that recoveries thereunder require "equity and justice." Schiltree County v. Hedrick, 366 S.W.2d 866 (Tx. Ct. Civil Appeals 1963).

4. Strict adherence to exact mathematical formulations which fail to encompass the equities in this case is inappropriate. The Court must seek equity and justice for all parties.

5. For example, the wellhead values for helium extracted at the two plants for the years 1963-1971 vary from a minus $.40 per Mcf to $5.34 per Mcf of helium. Additionally, the values of helium vary from plant to plant for exactly the same year; the value of the helium extracted from the Sherman plant in 1968 was $4.34 and the value of helium extracted from the Dumas plant for the same year is $.41 per Mcf. The court believes this clearly illustrates that rigid application of mathematical calculations under the work-back method would render fractured and inequitable results.

6. Equitable considerations indicate that a single uniform value for commingled helium should be applied to all of the helium extracted at both the Sherman and Dumas plants for each year.

7. The reasonable value of the helium commingled at the wellhead should be the sum that would have resulted from fair negotiations between an owner willing to sell and a purchaser desiring to buy. Standard Oil Company v. Southern Pacific Company, 268 U.S. 146 at 155 (1925)

8. Based upon all of the oral and documentary evidence presented by the parties during this trial and the first trial, the court concludes that the reasonable value of the commingled helium is $3.00 per Mcf of contained helium for each and every year that helium was produced, regardless of the plant from which it was produced.

9. Plaintiff Ashland is entitled to judgment against defendant Phillips as to the 72,748 Mcf of contained helium at issue in this case, in the amount of $218,244.00.

10. Generally, interest is awarded only where the amount involved is liquidated. Palmer v. Radio Corporation of America, 453 F.2d 1133 at 1140 (5th Cir. 1971) Previous to judgment herein, the amount owed Ashland has remained unliquidated. Phillips asserted a good faith and persuasive title claim to the commingled helium previous to the opinion in Northern Natural Gas Company v. Grounds, supra. Subsequently, the helium's value has remained very much in dispute.

Ashland is entitled to interest as of the judgment date herein, as provided by law.

An appropriate judgment will be entered herein.

Dated this 18th day of December, 1978.

Luther Bohanon
UNITED STATES DISTRICT JUDGE

7. The reasonable value of the helium commingled at the wellhead should be the sum that would have resulted from fair negotiations between an owner willing to sell and a purchaser desiring to buy. Standard Oil Company v. Southern Pacific Company, 268 U.S. 146 at 155 (1925)

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Ashland is entitled to interest as of the judgment date herein, as provided by law.

An appropriate judgment will be entered herein.

Dated this 28th day of December, 1978.

Luther Bohanon
UNITED STATES DISTRICT JUDGE

FOOTNOTES

1/ "Yes, I am familiar with the workback method of discovering the value of a raw material where there are no comparable sales that can be used to attribute value to it. Essentially, as I understand it, if a raw material is scarce enough to command a price or to have an economic value, then, this raw material may go through several stages of production and production process to turn it into an end product. At each of the production stages, there will be value added to what was originally a value of the raw material. The value added at each stage of production is essentially the cost of resources used in taking the material through that stage of production.

Now, then, a workback amounts to determining at some stage, at some market, at one of the stages of production, what the value of the product up to that point really is. Then, we subtract out the costs and that should leave us with the economic value of the raw material, if the starting point is correct, if the workback is correctly done." (Tr. 368-369, Dr. Richard H. Leftwich, Regents Professor of Economics and former head of the Department of Economics at Oklahoma State University.)

2/ ". . .[I]f you work back through several successive stages in going from one stage of the production process to another, there are likely to be errors involved, errors involved in computations. There will be errors involved because market structures differ at differing stages of production, and the more stages of production that you work back through, the more likely we are to compound these errors and to wind up with an erroneous computation, an erroneous value for the raw material. . . . [I]t seems to me that the appropriate starting point is the closest identifiable market to the raw material." (Tr. 369-370, Dr. Leftwich, supra)

See also the testimony of Dr. Ezra Solomon, Dean Witter Professor of Finance at Stanford University, at Tr. 418.

3/ ". . . [T]he crude helium that has been put into the government's Cliffside field . . . was never produced to supply current demands. . . . We don't know when it's going to be used. We don't know what purpose it's going to be used for, and we don't know what price it's going to be sold for sometime in the future, when and if it's ever used. . . .

So, it's setting there, and it's in the Cliffside field, and there is 36 billion cubic feet of it. Now, 2 billion cubic feet of that was put in there by the Bureau of Mines, so only 34 billion cubic feet represents helium that was obtained from the conservation companies . . . ." (Tr. 321-322, Henry P. Wheeler, Jr., former Assistant Director to the Bureau of Mines responsible for the government's helium conservation program)

"Q Of all of the helium acquired under the conservation program is all of it in storage at Cliffside?
A Yes, it is." (Tr. 283, 284, Ray D. Munnerlyn, Chief of the Helium Division of the Bureau of Mines)

4/ ". . . Ashland's calculations assume that if more crude had been refined, that the price would not have changed. Basic economic principle called the law of demand tells us that this is false, and the numerical analyses that I have just gone through show just how false this kind of an assumption, an underlying assumption can be. Because only a very small increase in the quantity of crude refined would lead to a relatively large decrease in the price of the Grade A helium." (Tr. 794, Dr. Ronald Braeutigam, Professor of Economics at Northwestern University)

5/ "There are a small number of end uses of refined helium and each of these end uses can absorb only limited quantities of refined helium." (Tr. 386, Dr. Leftwich, supra)

6/ "We could have gone out and been very hard bargainers, playing one of these companies against the other, because obviously some of them are going to get something for their helium and some of them were not . . . ." (Tr. 324, Wheeler, supra)

7/ ". . . [T]he volume of the crude helium was something like five to nine times the volume of the helium in the Grade A market, depending on which year you pick. So, for example, if we were to take one percent of the crude in any given year that had been produced and convert that to Grade A, then, you would get from five to nine percent change in the quantity of Grade A helium. And using this information on elasticity of demand, we conclude that the one percent increase in the quantity of crude which is refined would lead to a drop in price in the Grade A market, at least five percent, and maybe even more than nine percent, depending on the year we pick." (Tr. 793, Dr. Braeutigam, supra)

8/ "If a very large quantity of Grade A helium or refined helium were thrown on the market, this would drive the price down to near zero." (Tr. 387, Dr. Leftwich, supra)

9/ "It is simply not proper to infer the value of a large amount of crude helium, based upon the small amount of helium in the Grade A market. And to illustrate this. Suppose we did start with that $20 price of Grade A helium and suppose following the workback method we subtracted off the cost of converting crude helium to Grade A helium to arrive at some kind of net price for crude helium. The next step in the workback method then would be to try to compute a value for all of that crude helium, and this would be done by taking the net price that we calculated and multiplying it by the quantity of crude. The problem which arises is simply this. It imputes a value to all of the crude helium, based upon the $20 attached to only a very small volume in the Grade A market. In other words, the method that was proposed by Ashland assumes, in principle, if not in fact, that we could have refined all of that crude helium and sold it in the Grade A markets and that the price would not change from $20. This violates the fundamental law which economists call the law of demand, namely, we know that if the quantity of Grade A helium had been larger, that the price would have dropped. And this is exactly the point that Ashland has ignored in coming up with this workback method and applying the $20 figure as though we can impute a value to all of that crude helium based on that quantity, which is very small in the Grade A market. (Tr. 789-790, Dr. Braeutigam, supra)

10/ "I think that to start with we have a market which I would not characterize at the crude level as being a perfectly competitive market, certainly, in the classical economic sense. However, we do have throughout most of the time period I'm talking about evidence that we had at least four sellers in that market, and they were entering into contracts at prices which were not dictated, either by the government or by anyone else. They were freely negotiated prices. I would characterize the market as perhaps imperfectly competitive . . . ." (Tr. 801, Dr. Braeutigam, supra)

"So with these exchanges and very very substantial amounts of crude helium being exchanged, within a fairly narrow range of prices, I think there is no question but what we had a very good market for crude helium existing." (Tr. 375-376, Dr. Leftwich, supra)

11/
". . . [S]ince the workback cost figures that are being used in this case are Phillips' cost figures, Phillips' workback cost figures, then it appears to me that they ought to be applied to a Phillips' price, rather than taking Phillips' cost figures and applying it to some nebulous overall price. If we are going to use Phillips' costs, let's use Phillips' price to do our workback." (Tr. 391, Dr. Leftwich, supra)

12/
". . .[I]n the case of Phillips, one-half of its total crude sales to the government consisted of commingled gas that was not subject to the indemnity provision. And the price they sold that half at was no different than the price they sold the other half at, which did have something to do with the indemnity provision, which would suggest to me that they could not have given a great deal of weight to that provision in determining the negotiated price they settled on." (Tr. 423, Dr. Solomon, supra)

13/
"[The Phillips contract price] was a price that was necessary to induce Phillips to bring forth the amount of crude helium that the government wanted to purchase from Phillips." (Tr. 391, Dr. Leftwich, supra)

14/
Strict application of the work-back method would indicate that helium processed through the Sherman plant was worth $2.22 more at the wellhead than helium processed through the Dumas plant. (See Tr. 930. John C. Dunn, Economic and Financial Consultant)

15/
United States Exhibit No. 28

16/
". . .[A] market exists wherever two or more parties contact one another to engage an exchange, and where the parties agree on the terms of exchange." (Tr. 370, Dr. Leftwich, supra)
". . . [T]he market value of any item is reflected by the price at which both buyers and sellers are willing to exchange the item and a price at which neither shortages, nor surpluses, will occur.
Now, I would like to observe further here that the market value of an item is a price at which sellers are just induced to bring to market the quantities that buyers are willing to buy at that price. In other words, the value or the market price of an item must be sufficient to cover cost of production and a normal profit to the sellers, to the producers and the sellers.
The contract prices as a group that the conservation companies received from the government I think must be very close to a market value for crude helium. I think they must be very close to what a competitive price would be." (Tr. 376-377, Dr. Leftwich, supra)

17/
". . . I would say that any application of any theory which comes out with an answer which is much different from $2, either plus or minus a little bit, there is something wrong with the method, because it does not adequately reflect the situation that existed at the time.
Q And why do you say that, sir?
A I was there, I knew what it cost to go out to get helium-bearing natural gas, and I know that I could have gotten all we wanted for $2, or less, and that's what it was worth." (Tr. 337-338, Wheeler, supra)

18/
Tr. 838-848. Dr. Leo Garwin, Consulting Engineer. See finding of fact No. 35.

19/
Q. "Now, did Kansas-Nebraska enter into an agreement with Cities Service . . .?
A. Yes, sir, there is a-- there is a provision in the processing agreement for a payment for the right to extract the helium.
Q. All right, sir. Do you recall what that payment--
A. Yes, sir, its $2.00 per mcf.
Q. Of contained helium?
A. Yes, sir.
Q. Is that contained helium extracted?
A. Extracted, yes, sir.
Q. And can you tell the court generally how the $2.00 price was arrived at?
A. My memory is that at the time we were negotiating that arrangement with Cities, we only had one pattern to go by, which was a contract between Colorado Interstate and the government at the Keyes, that's K-e-y-e-s, plant, and that was $2.00. We were willing to accept that and Cities was willing to pay that, so that's what we arrived at.
Q. All right, sir. And do you recall about what year that would have been in?
A. I think that was probably about 1966, I guess."
(Tr. 14-15. Defendant Phillips' Exhibit No. 39. Deposition of S. D. Ford, Jr., vice president of production and gas supply with Kansas-Nebraska Natural Gas Company)

20/
"Estimates of the future demand of any commodity are notoriously unreliable and helium is no exception." (Plaintiff's Exhibit 2-31, p. 16, A REPORT TO THE PRESIDENT AND THE CONGRESS OF THE UNITED STATES ON THE ENERGY-RELATED APPLICATIONS OF HELIUM AND RECOMMENDATIONS CONCERNING THE MANAGEMENT OF THE FEDERAL HELIUM PROGRAMS See also Tr. 982)

21/
One Mcf is one thousand (1,000) cubic feet.

22/
In any event, more than one-half of the helium sold by Phillips to the government was not covered by Article 7.4 for it was produced from Phillips' own gas wells. Since paragraph 7.4 is irrelevant as to Phillips owned gas, the sale of helium produced by Phillips from its own wells represents a substantial comparable sale which clearly supports the use of Phillips' contract price as the starting value.

23/
Ashland contends that the net value of the additional liquids (called incremental liquids by Ashland) should be used under the by-product cost accounting method to reduce the cost of helium extraction. On its exhibits Ashland adds the net value of these incremental liquids to the wellhead value of the helium but the effect is the same as subtracting these net liquid values from the cost of helium extraction before determining the wellhead value of the helium. Phillips contends that Ashland has not properly calculated the volume of what it calls incremental liquids in that the base period selected by Ashland does not actually reflect what the liquid recovery would have been in succeeding years had the helium plants not been built and that Ashland has been arbitrary in its determination of the incremental liquids inasmuch as it has failed to take into account the fact that processing the natural gas through the helium plants actually caused a reduction in the recovery of the most valuable of these liquid products. Phillips contends that Ashland has already received the benefit of Phillips' cost savings and that no
(Cont'd)

23/ (Cont'd)
allocation of expenses to hydrocarbon production is necessary. Furthermore, Phillips contends that if an allocation of helium plant expenses to the production of hydrocarbons must be made, then the allocation should be made on the basis of a functional benefit cost study.

24/
Tr. 838-848; United States Exhibit Nos. 36, 37; Dr. Garwin, supra.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	
ALBERT JACK BLAIR, Defendant.	)	No. 78-C-381-B

ORDER OF DISMISSAL

Pursuant to the executed Agreement of Settlement and Stipulation, approved by the Magistrate and filed in the case on November 5, 1978, and pursuant to Rule 41(a)(2), Federal Rules of Civil Procedure, it is hereby

Ordered, Adjudged, and Decreed that this ~~matter is~~ matter & cause of action & complaint are dismissed without prejudice.

Dated this 27th day of December, 1978.

Allen E. Barrow
Chief United States District Judge

Approved As To
Form And Content:

GOMER A. EVANS, JR. Attorney for Defendant

KENNETH P. SNOKE
Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SILVERLINE, INC.,	)	
	)	
Plaintiff,	)	
	)	No. M-808
vs.	)	
	)	
LEE ROY SCHIEBAUM, JR.,	)	
	)	
Defendant.	)	
IN THE MATTER OF:	)	
	)	
LEE ROY SCHIERBAUM, JR.,	)	
	)	Case No. B-71-382-PHX-VM
Bankrupt.	)	
		No. 78-C-158-B

ORDER

The Court has for consideration the Motion for Transfer of Anciallary Proceeding to the United States District Court, Eastern District of Michigan, Southern Division, filed by Lee Roy Schierbaum, Jr., and Silverline, Inc., having filed a response, wherein it is stated that it has no objection to such transfer,

IT IS ORDERED that the Motion for Transfer of Anciallary Proceeding filed by Lee Roy Schierbaum, Jr. be and the same is hereby sustained.

IT IS FURTHER ORDERED that this case is transferred to the United States District Court, Eastern District of Michigan, Southern Division.

ENTERED this 27th day of December, 1978.

Allen E. Barrow

CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ROBERT JERRY LEE, Petitioner,	)	
v.	)	NO. 78-C-328-B
PETER A. DOUGLAS, et al., Respondents.	)	

O R D E R

The Court has for consideration the pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 filed by Robert Jerry Lee. Said cause was filed in the Western District of Oklahoma, Case No. CIV 78-0730-T, and transferred to this Court pursuant to 28 U.S.C. § 2241(d).

Petitioner is a prisoner at the Lexington Regional Treatment Center, Lexington, Oklahoma, upon conviction in the District Court of Rogers County, Claremore, Oklahoma. Petitioner was convicted on pleas of guilty in Cases Nos. CRF-76-195, CRF-76-208 and CRF-76-212 charging obtaining money by false pretenses, and he was sentenced October 29, 1976, to seven years' imprisonment in each of the three cases to run concurrently. He did not file a direct appeal. He did file for post-conviction relief, but voluntarily withdrew the applications March 24, 1977. Petitioner then filed a petition for modification of sentence in the Oklahoma Court of Criminal Appeals, Case No. O-77-84, which was denied for lack of jurisdiction by Order dated and filed March 2, 1977. Also, he filed a petition for writ of habeas corpus in the District Court of Cleveland County, Case No. C-78-98, setting forth as grounds that he was arrested October 2, 1976, in Claremore, Oklahoma, in relation to worthless checks, no charges were filed until October 6, 1976, and he was held without bail or appearance before a Judge until October 8, 1976, six days after arrest. Then, excessive bail was set in the amount of $30,000, and counsel was appointed not of his choice, and said counsel made no effort to get bail reduced and did not have his interest at heart. Said habeas corpus was denied, and the appeal therefrom, Case No. H-78-326, was dismissed for failure to raise an issue sufficient to invoke the jurisdiction of the Oklahoma Court of Criminal Appeals by Order dated and filed July 5, 1978.

It also appears that Petitioner has pending a case before the United States District Court for the Western District of Oklahoma, CIV-78-0520-B, and a case before the District Court of Cleveland County, State of Oklahoma, C-78-666(B), which have not been decided. However, these pending cases

involve conditions of imprisonment which are not presented in the petition to this Court.

In the petition under consideration, Petitioner demands his release from custody and as grounds therefor claims that he is being deprived of his liberty in violation of his rights under the Constitution of the United States of America. In particular, Petitioner claims:

1. The Trial Court was without jurisdiction to prosecute and sentence him as he was arrested October 2, 1976, and held six days without Court appearance, bail, or counsel. He claims to have been shuffled back and forth between State and Federal Courts and that he lost any opportunity to locate witnesses or present an adequate defense.

2. Bail was set in a grossly excessive amount making him unable to get funds to retain counsel of his choice, and preventing his getting necessary witnesses to assist in his case. Petitioner further complains that the time between waiver of arraignment and sentencing was approximately fifteen minutes.

These issues have been exhausted in State proceedings and they are not grounds sufficient to support the relief he seeks. An evidentiary hearing herein is not required and the petition should be denied.

If Petitioner is attempting to claim that he was denied a speedy trial, his conclusory allegations fall far short of setting forth any identifiable prejudice to him affecting his substantial rights and do not support the relief he seeks . No actual prejudice to the conduct of the defense is shown, and there is no claim or showing that there was intentional delay on the part of the prosecution to gain some tactical advantage over the Petitioner or to harass him. See, United States v. Marion, 404 U. S. 307 (1971); United States v. Lovasco, 431 U. S. 783 (1977).

Further, the issues raised in this petition all occurred prior to his pleas of guilty in the State Court. He does not claim that his guilty pleas were unknowing or involuntary. A valid plea of guilty waives all prior non-jurisdictional defects. United States v. Saltow, 444 F.2d 59 (10th Cir. 1969); Acuna v. Baker, 418 F.2d 59 (10th Cir. 1969); United States v. Nooner, 565 F.2d 633 (10th Cir. 1977). The matters Petitioner complains of occurring prior to his pleas come too late. They are not cognizable in habeas corpus at this time. See, Blackledge v. Perry, 417 U. S. 21, 29 (1974); Corn v. State of Oklahoma, 394 F.2d 478 (10th Cir. 1968); Moore v. Rodriguez, 376 F.2d 817 (10th Cir. 1967) cert. den. 389 U.S. 876 (1967); Mahler v. United States, 333 F.2d 472 (10th Cir. 1964) cert. den. 379 U. S. 993 (1965).

IT IS, THEREFORE, ORDERED that the petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 of Robert Jerry Lee be and it is hereby overruled and denied and the case is dismissed.

Dated this 27th day of December, 1978, at Tulsa, Oklahoma.

Allen E. Barrow

CHIEF JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

L-5091

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROSE MARIE CRAGO, Plaintiff,	)	
vs.	)	NO. 78 C 311 B
CITY OF TULSA and TULSA INTERNATIONAL AIRPORT, Defendants.	)	

APPLICATION FOR ORDER OF DISMISSAL

COME now the plaintiff and the defendants and show to the Court that the issues in the above captioned matter have been compromised and settled; and that there is no longer any adjudicative issue between the parties existing. That these parties would jointly move this Court to enter its Order dismissing the cause with prejudice as to all claims and actions pending.

William K. Powers
Attorney for Plaintiff

Robert L. Battoglia
Attorney for Defendants

ORDER

This matter comes on for consideration this 29th day of December, 1978, on the joint application of the plaintiff and the defendants for an Order of Dismissal. The Court, being fully advised, finds that said matter should be dismissed with prejudice to any future action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above and foregoing cause of action and complaint is dismissed with prejudice to any future action.

JUDGE OF THE DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	CIVIL ACTION NO. 77-C-423-C
LENOVA E. COOKS, et. al., Defendants.	)	

ORDER OF DISMISSAL

NOW, on this 22nd day of December, 1978, there came on for consideration the Motion for Dismissal filed by the United States of America, which Motion is well taken. The Court finds this action should be dismissed without prejudice.

NOW, IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the instant action be and the same is hereby dismissed without prejudice.

/s/ H. Dale Cook
UNITED STATES DISTRICT JUDGE

cl

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO. 78-C-599-C
	)	
HOWARD J. ROSENTHAL, a/k/a, HOWARD JAY ROSENTHAL,	)	
	)	
Defendant.	)	

NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff herein, by and through its attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action, without prejudice.

Dated this 20th day of December, 1978.

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney

ROBERT P. SANTEE
Assistant United States Attorney

pj

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing pleading was served on each of the parties hereto by mailing the same to them or to their attorneys of record on the 20th day of December, 1978.

Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

PAUL A. BISCHOFF, Plaintiff,	)	
vs.	)	No. 77-C-343-C
GRUMMAN AMERICAN AVIATION CORPORATION, GRUMMAN CORPORATION, CORWIN MEYER, ALBERT GLENN, ALAN LEMLEIN, CHARLES COPPI, NORMAN STEINER, JOSEPH GAVIN, JR., RICHARD KEMPER, ROY GARRISON, GEORGE WESTPHAL, ROBERT HUMMEL, FRANK WISEKAL, FRED KIDDER, FRED JOHNSON, ROBERT FREESE, EMMY PICCARD, ESTATE OF CLAUDE FLANIGAN, DECEASED, Defendants.	)	

STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiff, Paul A. Bischoff, and his attorneys, Michael J. Kutsko, Ronald Mullin and Barney W. Miller, and the defendants, Grumman American Aviation Corporation and Grumman Corporation, and each of them, acting by and through their attorneys of record, stipulate and agree that the claims and causes of action of the plaintiff, Paul A. Bischoff, shall be dismissed with prejudice.

Paul A. Bischoff
Paul A. Bischoff
Plaintiff

Ronald J. Mullin
Michael J. Kutsko
Ronald J. Mullin
Kutsko, Moran & Mullin
1701 Franklin Street
San Francisco, California 94109
415/885-1500

Barney W. Miller
2600 City National Bank Tower
Oklahoma City, Oklahoma 73102
405/239-7707

Attorneys for Plaintiff

34

D. C. Johnston, Jr.
3200 Liberty Tower
Oklahoma City, Oklahoma 73102
405/235-1611

L. S. Carsey
Bank of the Southwest Building
Houston, Texas 77002
713/651-5151

Attorneys for Defendants,
Grumman American Aviation Corporation
and Grumman Corporation

ORDER

The parties hereto having entered into a Stipulation and Agreement that the claims and causes of action of the plaintiff, Paul A. Bischoff, shall be dismissed with prejudice, which Stipulation and Agreement the Court approves, and the Court being fully advised.

IT IS HEREBY ORDERED that the claims and causes of action of Paul A. Bischoff in the above styled and numbered cause be, and the same are hereby dismissed with prejudice.

Dated this 18 day of December, 1978.

United States District Judge

NOTE: THIS ORDER IS TO BE MAILED BY MOVANT TO ALL COUNSEL AND PRO SE LITIGANTS IMMEDIATELY UPON RECEIPT.

IN THE UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

PATRICK B. BEVENUE, et al., Plaintiffs,	)	
vs.	)	78-C-313-B
JOE D. HUGHES, INC., Defendant.	)	

FILED

DEC 18 1978

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

It appearing to the Court that the above-entitled action has been fully settled, adjusted and compromised, and based on the stipulation should be dismissed with prejudice; therefore

IT IS ORDERED AND ADJUDGED that the above-entitled action and complaint be, and ~~it is~~ they are hereby, dismissed with prejudice to the plaintiff.

cause of

Allen E. Barrow

ALLEN E. BARROW
UNITED STATES DISTRICT JUDGE

APPROVED:

Don E. Glover

DON E. GLOVER
Attorney for Plaintiff
Legal Services of Eastern Oklahoma
630 West 7th Street, Suite 501
Tulsa, Oklahoma 74127

Joseph M. Best

JOSEPH M. BEST
Best, Sharp, Thomas & Glass
Attorneys for Defendant
507 South Main, Suite 300
Oil Capital Building
Tulsa, Oklahoma 74103

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
DEC 18 1978
Jack C. Silver, Clerk
U. S. DISTRICT COURT

HEATHER CHANDLER GRAY,

Plaintiff,

vs.

J. PATRICK O'MALLEY'S RESTAURANT, An Oklahoma Corporation,

Civil Action No. 77-C-381-B

THIS matter having come on for dismissal of the plaintiff and defendant [illegible] cause with prejudice to its refiling, [illegible] of the Court that the defendant, J. PATRICK O'MALLEY'S RESTAURANT, has agreed to pay to the plaintiff, HEATHER CHANDLER GRAY, the sum of FIFTEEN HUNDRED DOLLARS ($1,500.00) in return for her consenting to dismiss her cause of action with prejudice and releasing this cause of action against it.

It is the further finding of the Court that the plaintiff has agreed to accept the sum of FIFTEEN HUNDRED DOLLARS ($1,500.00) from the defendant and to dismiss this cause of action against the defendant and to accept said sum as a full and final settlement of any and all claims she would have against the defendant for any matters arising out of the cause of action stated in her Petition.

It is the further finding of the Court that this settlement is fair and equitable and that such an Order should be issued.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this ~~case is~~ cause of action & complaint are hereby dismissed with prejudice to its refiling.

Allen E. Barrow
United States District Judge

APPROVED AS TO SUBSTANCE AND FORM:

Patrick E. Carr
Patrick E. Carr, Attorney for Plaintiff

Robert M. Kane
Robert M. Kane, Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OKLAHOMA

FILED

DEC 18 1978

Jack C. Silver, Clerk
U. S. DISTRICT COURT

FORREST BUGHER, et al., Plaintiffs,	)	
vs.	)	CIVIL ACTION
BILL MILLER X-RAY, INC., Defendant.	)	NO. 77-C-185-B

O R D E R

THIS MATTER coming on to be ~~heard~~ considered upon Plaintiffs' Motion to dismiss the above-entitled action with prejudice and without costs, it appearing to the Court that all matters in controversy for which the action was brought having been resolved, and the Court being fully advised in the premises;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

That the above-entitled ~~matter~~ cause of action + complaint be and hereby ~~is~~ are dismissed with prejudice and without costs.

ENTER: December 18, 1978

Allen E. Barrow
UNITED STATES DISTRICT JUDGE

DATED:

Names and Addresses of Attorneys for Plaintiffs and Defendants:

BERNARD M. BAUM
LOUIS E. SIGMAN
39 South LaSalle Street
Chicago, Illinois 60603
312-236-4316

H. WAYNE COOPER
1200 Atlas Building
Tulsa, Oklahoma 74103
918-582-1211

H. Wayne Cooper
Attorneys for Plaintiffs

BRIAN S. GASKILL
Sneed, Lang, Trotter, Adams,
Hamilton & Downie
Thurston National Building
Tulsa, Oklahoma 74103
918-583-3145

Brian S. Gaskill
Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OKLAHOMA

FILED

DEC 18 1978

Jack C. Silver, Clerk
U. S. DISTRICT COURT

FORREST BUGHER, et al., Plaintiffs, vs. SOUTHWEST X-RAY Defendant.	)	CIVIL ACTION NO. 77-C-183-B

O R D E R

~~heard~~ considered

THIS MATTER coming on to be ~~heard~~ upon Plaintiffs' Motion to dismiss the above-entitled action with prejudice and without costs, it appearing to the Court that all matters in controversy for which the action was brought having been resolved, and the Court being fully advised in the premises;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

That the above-entitled ~~matter~~ causes of action & complaint be and hereby ~~is~~ are dismissed with prejudice and without costs.

ENTER: December 18, 1978

Thomas R. Brett
UNITED STATES DISTRICT JUDGE

DATED:

Names and Addresses of Attorneys for Plaintiffs and Defendants:

BERNARD M. BAUM
LOUIS E. SIGMAN
39 South LaSalle Street
Chicago, Illinois 60603
312-236-4316

H. WAYNE COOPER
1200 Atlas Building
Tulsa, Oklahoma 74103
918-582-1211

H. Wayne Cooper
Attorneys for Plaintiffs

BRIAN S. GASKILL
Sneed, Lang, Trotter, Adams,
Hamilton & Downie
Thurston National Building
Tulsa, Oklahoma 74103

Brian S. Gaskill
Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SHARON K. CHOCKLEY, Individually and as Surviving Wife for and on Behalf of the Heirs, Executors and Administrators of the Estate of Robert Chockley, Deceased,	)	FILED DEC 15 1978 Jack C. Silver, Clerk U. S. DISTRICT COURT
Plaintiff,	)	
vs.	)	
GRAND RIVER DAM AUTHORITY, a Body Politic and a Body Corporate,	)	
Defendant.	)	NO. 78-C-149-C

JUDGMENT

Pursuant to the Stipulation of the parties heretofore filed herein, it is ordered that judgment in the sum of ONE HUNDRED SEVENTY ONE THOUSAND DOLLARS ($171,000.00), plus the costs of this action be entered in favor of the plaintiff, Sharon K. Chockley, individually and as surviving wife for and on behalf of the heirs, executors and administrators of the Estate of Robert Chockley, deceased, against the defendant, Grand River Dam Authority.

Entered this 15th day of December, 1978.

JUDGE OF THE UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CITIES SERVICE COMPANY, Plaintiff,	)	
vs.	)	No. 78-C-146-C
MARATHON OIL COMPANY, Defendant.	)	

ORDER OF DISMISSAL OF PLAINTIFF'S COMPLAINT AND DEFENDANT'S COUNTER-CLAIM

On this 15th day of December, 1978, upon the written stipulation of the parties for a dismissal with prejudice of the plaintiff's complaint and the defendant's counter-claim, the Court having examined said stipulation, finds the parties have entered into a compromise settlement of all of the claims involved herein, and the Court being fully advised in the premises finds that the plaintiff's complaint against the defendant and the defendant's counter-claim against the plaintiff should be dismissed with prejudice.

IT IS THEREFORE ORDERED BY THE COURT that the complaint of the plaintiff against the defendant and the counter-claim of the defendant against the plaintiff be and the same are hereby dismissed with prejudice to any future action.

UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	CIVIL ACTION NO. 76-C-445-B
ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, Defendant.	)	

STIPULATION OF DISMISSAL

COME NOW the United States of America, Plaintiff, by and through its attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and St. Louis-San Francisco Railway Company, Defendant, by and through its attorney, Grey W. Satterfield, and herewith stipulate and agree that this action be and the same is hereby dismissed without prejudice.

Dated this 15th day of December, 1978.

HUBERT H. BRYANT
United States Attorney

ROBERT P. SANTEE
Assistant U. S. Attorney

GREY SATTERFIELD
Attorney for Defendant

cl

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JUDITH A. GOURLEY, and others similarly situated, Plaintiff,	)	
vs.	)	No. 78-C-556-B
BANK OF LOCUST GROVE, a state banking corporation, Defendant.	)	

NOTICE OF DISMISSAL WITH PREJUDICE

The plaintiff, Judith A. Gourley, pursuant to the provisions of Rule 41(a) of the Federal Rules of Civil Procedure hereby notifies the Court of the dismissal of her complaint and claim for relief with prejudice.

DATED this 14th day of December, 1978.

STAINER & STAINER

By Randolph P. Stainer
Randolph Stainer
812 Mayo Building
Tulsa, OK 74103

Attorneys for the Plaintiff

CERTIFICATE OF MAILING

I hereby certify that on the 14th day of December, 1978 I mailed a true and correct copy of the foregoing instrument to Joel L. Wohlgemuth, 1100 Philtower Building, Tulsa, Oklahoma 74103.

Randolph P. Stainer
Randolph Stainer

4.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff-Respondent,	)	
v.	)	NOS. 78-C-426-B
	)	76-CR-158
LACY LEE PARKER, Defendant-Movant.	)	

ORDER

The Court has for consideration the motion pursuant to 28 U.S.C. § 2255 of Lacy Lee Parker. The cause has been assigned civil Case No. 78-C-426-B and docketed in the criminal Case No. 76-CR-158. Movant also has a pending motion pursuant to Rule 35, Federal Rules of Criminal Procedure, seeking discretionary modification of sentence.

Movant is a prisoner in the United States Penitentiary, Leavenworth, Kansas, pursuant to conviction by jury of five counts of an indictment charging conspiracy and substnative counts of transporting in interstate commerce forged securities in violation of 18 U.S.C. § 371 and §§ 2314 and 2. He was sentenced on Count One to two years' imprisonment and on Counts Two, Three, Four and Five, the imposition of sentence was suspended and he was placed on five years probation as to each count, Counts Three, Four and Five to run concurrently with Count Two. It was a special condition of probation that Movant make $12,439.00 restitution at the rate of $230.35 a month. The Tenth Circuit Court of Appeals affirmed the conviction by mandate filed July 24, 1978, and received by this United States District Court on August 17, 1978.

Movant asserts as grounds for his § 2255 motion that there is a wide disparity in sentencing between this Movant, Lacy Lee Parker, and his co-conspirators. He further asserts that rehabilitation and deterrence may be achieved through the present probation restrictions and requirement of restitution without the necessity of incarceration.

The Court having carefully reviewed the pending motions and file, and being fully advised in the premises, finds that there is no need for response or evidentiary hearing and the § 2255 motion should be denied. A claim of excessive sentence as compared to that of co-defendants is without merit and will not support a § 2255 motion, as identical punishment for like crimes is not required by the Fourteenth Amendment; and,

there is no constitutional requirement that prisoners charged under the same statute, or different statutes, should receive like or comparable sentences so long as each sentence imposed is within the range provided by law. Williams v. Oklahoma, 358 U. S. 576, 585 (1959) reh. denied 359 U. S. 956; Williams v. New York, 337 U. S. 241 (1949) reh. denied 337 U. S. 961, 338 U. S. 841; Andrus v. Turner, 421 F.2d 290 (10th Cir. 1970); United States v. Baer, 575 F.2d 1295 (10th Cir. 1978).

Further, treating the § 2255 motion as a motion for discretionary modification of sentence conjointly with the pending motion for such relief, the Court finds that under the circumstances before the Court the sentence imposed was lenient, proper, and within the range provided by the laws violated. The sentence should not be set aside or reduced.

IT IS, THEREFORE, ORDERED that the motion pursuant to 28 U.S.C. § 2255 of Lacy Lee Parker be and it is hereby overruled and dismissed.

IT IS FURTHER ORDERED that the Rule 35, Federal Rules of Criminal Procedure, motion for discretionary modification of sentence be and it is hereby overruled.

Dated this 14th day of December, 1978, at Tulsa, Oklahoma.

Allen E. Barrow

CHIEF JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff-Respondent,	)	
v.	)	NOS. 78-C-427-B
	)	76-CR-158
R. D. BROWN, Defendant-Movant.	)	

O R D E R

The Court has for consideration the motion pursuant to 28 U.S.C. § 2255 of R. D. Brown. The cause has been assigned civil Case No. 78-C-427-B and docketed in the criminal Case No. 76-CR-158. Movant also has a pending motion pursuant to Rule 35, Federal Rules of Criminal Procedure, seeking discretionary modification of sentence.

Movant is serving a sentence to sixty months, six months in a jail-type institution, and the remaining fifty-four months on probation with the special condition that he make restitution in the amount of $3,065.00 at the rate of $56.76 a month to begin the second month after his release from confinement. Sentence was imposed following Movant's conviction by jury of conspiracy to commit interstate transportation of falsely made and forged securities in violation of 18 U.S.C. § 371. The Tenth Circuit Court of Appeals affirmed the conviction by mandate filed July 24, 1978, and received by this United States District Court on August 17, 1978.

Movant asserts as grounds for his § 2255 motion that there is a wide disparity in sentencing between this Movant, R. D. Brown, and his co-conspirators. He further contends that rehabilitation and deterrence may be achieved without the necessity of incarceration.

The Court having carefully reviewed the pending motions and file, and being fully advised in the premises, finds that there is no need for response or evidentiary hearing and the § 2255 motion should be denied. A claim of excessive sentence as compared to that of co-defendants is without merit and will not support a § 2255 motion, as identical punishment for like crimes is not required by the Fourteenth Amendment; and, there is no constitutional requirement that prisoners charged under the same statute, or different statutes, should receive like or comparable sentences so long as each sentence imposed is within the range provided by law. Williams v. Oklahoma, 358 U. S. 576, 585 (1959) reh. denied 359

U. S. 956; Williams v. New York, 337 U. S. 241 (1949) reh. denied 337 U. S. 961, 338 U. S. 841; Andrus v. Turner, 421 F.2d 290 (10th Cir. 1970); United States v. Baer, 575 F.2d 1295 (10th Cir. 1978).

Further, treating the § 2255 motion as a motion for discretionary modification of sentence conjointly with the pending motion for such relief, the Court finds that under the circumstances before the Court the sentence imposed was lenient, proper, and within the range provided by the law violated. The sentence should not be set aside or reduced.

IT IS, THEREFORE, ORDERED that the motion pursuant to 28 U.S.C. § 2255 of R. D. Brown be and it is hereby overruled and dismissed.

IT IS FURTHER ORDERED that the Rule 35, Federal Rules of Criminal Procedure, motion for discretionary modification of sentence be and it is hereby overruled.

Dated this 14th day of December, 1978, at Tulsa, Oklahoma.

Allen E. Barrow

CHIEF JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

CARTER ROUSE, A Minor, By and Through his next Friend and Father, LUCIEN ROUSE,

Plaintiff,

vs.

DOUG FRIEDMAN, d/b/a THE SPORTS CAR SHOPPE,

Defendant,

and

THE SPORTS CAR SHOPPE, INC., an Oklahoma Corporation,

Substituted Defendant.

No. 78-C-333-C

FILED

DEC 13 1978

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

The plaintiff herein requests a declaration that Oklahoma's possessory lien law, Title 42 O.S. § 91, is unconstitutional under the Due Process Clause of the 14th Amendment and requests an injunction prohibiting the defendant from further detaining or selling plaintiff's automobile pursuant to that law. Plaintiff also prays for the return of his automobile, or in the alternative, a money judgment for the value of the same. Plaintiff further asks the Court to determine the validity of the debt underlying defendant's possessory lien. Now before the Court are the plaintiff's Motion for Summary Judgment, the defendant's Motion to Dismiss Complaint and Withdraw Counterclaim, and the plaintiff's Motion to Dismiss Counterclaim.

In April, 1978, the plaintiff delivered his automobile to the defendant for the purpose of having some mechanical work performed. The plaintiff alleges that the defendant promised to do the work for approximately $100.00, and further promised to call the plaintiff if it was going to

cost any more. The defendant now demands approximately $500.00 for repairs which it alleges were authorized by the plaintiff. Under the provisions of Title 42 O.S. § 91, the defendant is maintaining possession of plaintiff's automobile until the repairs are paid for. However, the defendant has not sold the automobile pursuant to the provisions of Section 91, and defendant's president has represented by affidavit that it will not do so.

Section 91 provides in pertinent part as follows:

> "(a) Every person who, while lawfully in possession of an article of personal property, renders any service to the owner thereof by furnishing material, labor or skill for the protection, improvement, safekeeping, towing, storage or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner for such service.
>
> (A) Said lien may be foreclosed by a sale of such personal property upon the notice and in the manner following: The notice shall contain:
>
> (1) The names of the owner and any other party or parties who may claim any interest in said property.
>
> (2) A description of the property to be sold.
>
> (3) The nature of the work, labor or service performed, material furnished, and the date thereof.
>
> (4) The time and place of sale.
>
> (5) The name of the party, agent or attorney foreclosing such lien.
>
> (B) Such notice shall be posted in three (3) public places in the county where the property is to be sold at least ten (10) days before the time therein specified for such sale, and a copy of said notice shall be mailed to the owner and any other party or parties claiming any interest in said property if known, at their last known post office address, by registered mail on the day of posting. Party or parties who claim any interest in said property shall include owners of chattel mortgages and conditional sales contracts as shown by the records in the office of the county clerk in the county where the lien is foreclosed.
>
> (C) The lienor or any other person may in good faith become a purchaser of the property sold.
>
> (D) Proceedings for foreclosure under this act shall not be commenced until thirty (30) days after said lien has accrued."

In its Motion to Dismiss, the defendant contends that plaintiff's constitutional claims have been rendered moot by

its sworn statement that plaintiff's automobile will not be sold, and that therefore the Court must dismiss this case for lack of subject matter jurisdiction.

> "Simply stated, a case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome. Where one of the several issues presented becomes moot, the remaining live issues supply the constitutional requirement of case or controversy." Powell v. McCormack, 395 U.S. 486, 496-7, 89 S.Ct. 1944, 23 L.Ed.2d 491 (1969) (Citations omitted).

Defendant's claim of mootness would only apply to one of the issues in this case, i.e. the constitutionality of the sale provisions. Even if that issue is assumed to be moot, this would not affect the other issues herein, specifically, the constitutionality of the possessory lien provision of Section 91. Defendant contends that the constitutionality of the possessory lien provision is not an issue here. This is simply not the case. The plaintiff does challenge that provision. The fact that the defendant says it will not sell the automobile does not alter the fact that the automobile is still in its possession. This issue is "live" and presents the requisite case or controversy.

However, the plaintiff's claim with respect to the sale provisions of Section 91 is not moot. The defendant's unilateral, unenforceable promise that it will not sell plaintiff's automobile does not destroy or diminish the controversy in regard to that issue.

This situation is analogous to the problem presented in Southern Pacific Terminal Co. v. Interstate Commerce Comm'n, 219 U.S. 498, 31 S.Ct. 279, 55 L.Ed. 310 (1911). The Supreme Court there held that it had jurisdiction to determine whether an order of the I.C.C. should be enjoined, even though the order had then expired.

> "The questions involved in the orders of the Interstate Commerce Commission are usually continuing (as are manifestly those in the case at bar) and their consideration ought

> not to be, as they might be, defeated, by short term orders, capable of repetition, yet evading review . . ." 219 U.S. at p.515.

Similarly, in Gray v. Sanders, 372 U.S. 368, 83 S.Ct. 801, 9 L.Ed.2d 821 (1963), the Supreme Court held that a 14th Amendment challenge to Georgia's county-unit system for counting votes in primary elections was not mooted by the state Democratic Committee's vote to hold the 1962 primary election on a popular vote basis, which action was taken in response to an injunction issued by the district court.

> "[W]e think the case is not moot by reason of the fact that the Democratic Committee voted to hold the 1962 primary on a popular vote basis. But for the injunction issued below, the 1962 Act remains in force; and if the complaint were dismissed it would govern future elections. In addition, the voluntary abandonment of a practice does not relieve a court of adjudicating its legality, particularly where the practice is deeply rooted and long standing. For if the case were dismissed as moot appellants would be 'free to return to . . . [their] old ways.'" 372 U.S. at pp. 375-6 (citations omitted).

The same results have been reached in varying factual contexts. The common denominator in these cases was a problem of public importance that had a continuing effect. See also Super Tire Eng. Co. v. McCorkle, 416 U.S. 115, 94 S.Ct. 1694, 40 L.Ed.2d 1 (1974); Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973); Dunn v. Blumstein, 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972); United States v. W. T. Grant Co., 345 U.S. 629, 73 S.Ct. 894, 97 L.Ed. 1303 (1953).

In Brooks v. Flagg Bros., Inc., 63 F.R.D. 409 (S.D.N.Y. 1974), the court held that a constitutional challenge to the warehousemen's lien provided by the Uniform Commercial Code was ripe, and the plaintiff's interest was not diminished for standing purposes when the defendant warehouseman agreed not to sell plaintiff's property pursuant to its lien during the pendency of the suit.

> "In the case at bar, the practices of the

> defendants under a continuing statute cannot be kept from judicial scrutiny by quick settlements or apologies. The threat alleged by Mrs. Jones that her furniture would be sold if she did not pay makes this a case or controversy, certainly for purposes of a declaratory judgment. Her property is concededly in the defendants' possession and the threat has been alleged. The defendants' position remains that storage fees are due and that Jones is responsible for them. Even though the threat of sale did not succeed in 'coercing' a 'voluntary' payment by Jones, defendants still maintain that they do have recourse to § 7-210 procedures. The fact that they agreed not to invoke § 7-210 during this suit does not affect Jones' action in terms of its ripeness any more than had Jones sought and won a restraining order. Since the threat of sale would have been sufficient for ripeness for purposes of a restraining order, it is also sufficient here.
>
> Similarly, the status quo accord does not diminish Jones' interest for purposes of standing. She has alleged '"such a personal stake in the outcome of the controversy as to assure that the [sic]concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions. . . ."'" 63 F.R.D. at p.413 (Citations omitted).

Likewise, the plaintiff here has alleged a threat by the defendant to sell his automobile. Since this is a motion to dismiss we must accept this allegation as true, even though it has been contested by the defendant. Furthermore, even though the promise in this case is contained in a sworn statement, it would not be entitled to any more mooting effect than a voluntary or involuntary cessation of the challenged activity as was raised in the cases cited above. The practice which is challenged by plaintiff is certainly a continuing one, and certainly has an effect on the public interest.

Contrary to the argument raised in defendant's Motion, the Court must conclude that it has subject matter jurisdiction. However, there is one matter noted by the parties that requires the dismissal of this action. It is the Court's view that neither the possessory lien nor the sale provisions of Section 91 involve such "state action" as would render them

vulnerable to a 14th Amendment challenge.

In further proceedings in Brooks v. Flagg Bros., Inc., 404 F.Supp. 1059 (S.D.N.Y. 1975), the court held that the sale provisions of the Uniform Commercial Code warehousemen's lien law did not involve sufficient state action. The Second Circuit reversed that determination. Brooks v. Flagg Bros., Inc., 553 F.2d 764 (2nd Cir. 1977). The Supreme Court agreed with the district court. Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 98 S.Ct. 1729, 56 L.Ed.2d 185 (1978). The Supreme Court analyzed the traditional bases for finding state action and concluded that none of them were applicable.

The power delegated to the warehouseman was not a power "'traditionally exclusively reserved to the State.'" 436 U.S. at p.157. The Court held that exclusivity was the key under this public-function doctrine of state action.

> "[T]he proposed sale by Flagg Brothers under § 7-210 is not the only means of resolving this purely private dispute. Respondent Brooks has never alleged that state law barred her from seeking a waiver of Flagg Brothers' right to sell her goods at the time she authorized their storage. Presumably, respondent Jones, who alleges that she never authorized the storage of her goods, could have sought to replevy her goods at any time under state law. The challenged statute itself provides a damages remedy against the warehouseman for violations of its provisions. This system of rights and remedies, recognizing the traditional place of private arrangements in ordering relationships in the commercial world, can hardly be said to have delegated to Flagg Brothers an exclusive prerogative of the sovereign." 436 U.S. at pp. 159-60. (Citations omitted).

In the instant case, there are other means available for resolving the dispute between the parties. A replevin action is provided by Oklahoma law. 12 O.S. §§ 1571, et seq. The Oklahoma possessory lien can be enforced in an equitable action in the state courts. This was apparently the practice prior to 1973 when Section 91 was amended to add the sale provisions. See Moral Ins. Co. v. Cooksey, 285 P.2d 223 (Okla. 1955). In fact, the defendant herein has

brought such a suit in the Tulsa County District Court. Section 91 does not mandate a sale, for the sale provisions are couched in permissive rather than mandatory language.

The Court in Flagg Bros. went on to hold that the warehouseman's proposed action was not attributable to the State because the State had not authorized and encouraged such action by passing the statute in question.

> "Our cases state 'that a State is responsible for the . . . act of a private party when the State, by its law, has compelled the act.' This Court, however, has never held that a State's mere acquiescence in a private action converts that action into that of the State. . . .
>
> It is quite immaterial that the State has embodied its decision not to act in statutory form. If New York had no commercial statutes at all, its courts would still be faced with the decision whether to prohibit or to permit the sort of sale threatened here the first time an aggrieved bailor came before them for relief. A judicial decision to deny relief would be no less an 'authorization' or 'encouragement' of that sale than the legislature's decision embodied in this statute. It was recognized in the earliest interpretations of the Fourteenth Amendment 'that a State may act through different agencies, -- either by its legislative, its executive, or its judicial authorities; and the prohibitions of the amendment extend to all action of the State' infringing rights protected thereby. If the mere denial of judicial relief is considered sufficient encouragement to make the State responsible for those private acts, all private deprivations of property would be converted into public acts whenever the State, for whatever reason, denies relief sought by the putative property owner." 436 U.S. at pp. 164-5. (Citations omitted).

The Court's most obvious conclusion was that there was no state action due to the "total absence of overt official involvement," thereby distinguishing such cases as Fuentes v. Shevin, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972), and Sniadach v. Family Finance Corp., 395 U.S. 337, 89 S.Ct. 1820, 23 L.Ed.2d 349 (1969), relied upon by the plaintiff in the instant case. 436 U.S. at p.157

Flagg Bros. requires a finding by this Court that the sale provisions of Section 91 do not involve state action.

The Court is not unmindful of those decisions which

hold that provisions of possessory lien laws authorizing a sale of the subject property do involve state action. See Parks v. "Mr. Ford", 556 F.2d 132 (3rd Cir. 1977); Cockerel v. Caldwell, 378 F.Supp. 491 (W.D.Ky. 1974). Plaintiff specifically refers the Court to the case of Caesar v. Kiser, 387 F.Supp. 645 (M.D.N.C. 1975), where the court found state action because of the participation of the North Carolina Department of Motor Vehicles in the sale of vehicles pursuant to that state's possessory lien law. Notice of sale had to be given to the Department before the sale was proper. N.C. Gen. Stats. § 44A-4(f). In Oklahoma, the statutory duty of the Department of Motor Vehicles is simply to issue a Certificate of Title to the new vehicle owner. 47 O.S. § 23.3. It has no connection with the sale. Technically, the statutes involved in Flagg Bros. did not provide for a "possessory lien". Nevertheless, the substance of that case is dispositive of the issue.

In regard to the possessory lien provision of Section 91, the courts that have considered that type of provision and comparable ones have consistently found an absence of state action. See Parks v. "Mr. Ford", supra; Phillips v. Money, 503 F.2d 990 (7th Cir. 1974). Compare Davis v. Richmond, 512 F.2d 201 (1st Cir. 1975); Hitchcock v. Allison, 572 P.2d 982 (Okla. 1977); Helfinstine v. Martin, 561 P.2d 951 (Okla. 1977). No further discussion of this issue is required.

In light of the foregoing, plaintiff's constitutional claims for injunctive and declaratory relief must be dismissed for failure to state a claim upon which relief can be granted.

Plaintiff's additional claims are based upon state law and are pendent to his federal claims. But because the plaintiff's federal claims have been dismissed, his state claims must be dismissed as well. United Mine Workers v. Gibbs, 383 U.S. 715, 725-6, 89 S.Ct. 1130, 16 L.Ed.2d 218 (1966). The defendant will also be allowed to withdraw its

counterclaim.

The plaintiff's Motion for Summary Judgment and Motion to Dismiss Counterclaim are now moot and must therefore be overruled.

For the foregoing reasons, it is therefore ordered that defendant's Motion to Dismiss and Withdraw Counterclaim is hereby sustained. It is further ordered that plaintiff's Motion for Summary Judgment and Motion to Dismiss Counterclaim are hereby overruled.

It is so Ordered this 12th day of December, 1978.

H. DALE COOK
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

MAPCO INC., a Delaware corporation, Plaintiff,	)	
vs.	)	No. 78-C-609-C
BELCO PETROLEUM CORPORATION, a Delaware corporation, Defendant.	)	

O R D E R

The Court has before it for consideration the motion of the plaintiff to remand this action to the Tulsa County District Court.

Title 28 U.S.C. § 1441(a) provides as follows:

> "Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending."

The petition filed by the plaintiff in the state court alleges a breach of contract by the defendant. No federal question is presented, and the jurisdiction of this Court, if it exists, would have to be based upon diversity of citizenship. Title 28 U.S.C. §§ 1332(a) and (c) provide, in pertinent part:

> "(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and is between --
> (1) citizens of different States;
>
> . . .
>
> (c) For the purposes of this section and section 1441 of this title, a corporation shall be deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business. . . ."

The petition for removal filed by the defendant alleges that both the plaintiff and the defendant are corporations organized under the laws of the State of Delaware, and hence that they are both citizens of that state. Consequently, because this action is not between citizens of different states, this Court has no subject matter jurisdiction. For that reason, plaintiff's motion to remand is hereby sustained.

It is so Ordered this 13th day of December, 1978.

H. DALE COOK
United States District Judge

L-4129

FILED

DEC 13 1978

Jack C. Silver, Clerk
U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JESSIE SCHULZ, Administratrix of the Estate of RAYMOND JOSEPH SCHULZ, Deceased,	)	
Plaintiff,	)	
vs.	)	NO. 76-C-111-B
WESTINGHOUSE ELECTRIC CORPORATION, a Pennsylvania Corporation,	)	
Defendant and Third Party Plaintiff,	)	
vs.	)	
CONSOLIDATED FABRICATORS, INC., a Massachusetts Corporation; and AUSTIN BUILDING COMPANY, a Texas Corporation,	)	
Third Party Defendants.	)	

APPLICATION FOR ORDER OF DISMISSAL

COME NOW the Plaintiff, Defendant and Third-Party Plaintiff and Third-Party Defendant, Consolidated Fabricators, Inc., and show to the Court that the issues in the above captioned matter have been compromised and settled; and that there is no longer any adjudicable issue between the parties existing. That these parties would jointly move this Court to enter its Order dismissing the cause with prejudice as to all claims and actions pending.

Attorney for the Plaintiff

Attorney for the Defendant and Third-Party Plaintiff

Attorney for the Third-Party Defendant, Consolidated Fabricators, Inc.

ORDER

This matter comes on for consideration this 14th day of December, 1978, on the joint Application of the Plaintiff, Defendant and Third-Party Plaintiff and Third-Party Defendant, Consolidated Fabricators, Inc., for an Order of Dismissal. The Court being fully advised finds that said matter should be dismissed with prejudice to any future action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above and foregoing cause of action and complaint is dismissed with prejudice to any future action.

Allen E. Barrow
JUDGE OF THE DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BENJAMIN M. BAILEY, Plaintiff,	)	
vs.	)	No. 77-C-447-C
TELEX COMPUTER PRODUCTS, INC., Defendant.	)	

ORDER

Plaintiff brings the above-captioned case pursuant to the provisions of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §§ 2000e, et seq.). According to the Pre-Trial Order filed herein, plaintiff contends that this action presents three issues of fact, i.e., 1.) Whether the plaintiff was denied training given to similarly situated white employees of the defendant because of his race. 2.) In the event the defendant is found to have discriminated against the plaintiff because of his race, what are his damages. 3.) Is plaintiff entitled to an injunction prohibiting the defendant from continuing its unlawful employment practice. The defendant contends that there are no issues of material fact, and accordingly has filed a Motion for Summary Judgment which is now before the Court for its consideration.

In support of its Motion, the defendant has submitted affidavits and considerable documentary evidence. The plaintiff has not provided the Court with any factual support for his claim, but instead relies entirely on the allegations of his Complaint.

The Court must consider factual inferences tending to show triable issues in the light most favorable to those issues when it is considering a motion for summary judgment, Stevens v. Barnard, 512 F.2d 876 (10th Cir. 1975), and

pleadings and other evidence must be construed liberally in favor of the party opposing the motion. Adickes v. S. H. Kress & Co., 398 U.S. 144, 90 S.Ct. 1598; 26 L.Ed.2d 142 (1970), Webb v. Allstate Life Ins. Co., 536 F.2d 336 (10th Cir. 1976); Stevens v. Barnard, supra. The burden is upon the moving party to show, beyond a reasonable doubt, the absence of a genuine issue as to any material fact. Adickes v. S. H. Kress & Co., supra; Mogle v. Sevier County School Dist., 540 F.2d 478 (10th Cir. 1976); Stevens v. Barnard, supra. Nevertheless, under Rule 56(e) of the Federal Rules of Civil Procedure, once a properly supported summary judgment motion is made, the opposing party may not rest on the allegations contained in his complaint, but must respond with specific facts showing the existence of a genuine factual issue. Adickes v. S. H. Kress & Co., supra; First Nat'l. Bank of Arizona v. Cities Service Co., 391 U.S. 253, 88 S.Ct. 1575, 20 L.Ed.2d 569 (1968); Brown v. Ford Motor Co., 494 F.2d 418 (10th Cir. 1974). Because the plaintiff has not responded to defendant's well-supported motion with specific facts, summary judgment, if appropriate, may properly be rendered against the plaintiff. F.R.C.P., Rule 56(e).

The basic facts with respect to plaintiff's initial employment history with the defendant are undisputed. The plaintiff started working for the defendant in May, 1969 as a final technician B. On July 14, 1969, he was reclassified to final technician A. On June 29, 1970, the plaintiff was reclassified to field service engineer, also known as customer engineer. During the period plaintiff was a field service engineer, he was given good marks by his superiors in tape drive equipment. He was known as an enthusiastic worker, and was always ready to volunteer for extra work.

It is at this point that the plaintiff alleges that the defendant denied him certain training opportunities on account of his race. Plaintiff alleges that during his

tenure as a field service engineer, the defendant gave field service engineers training on new equipment and technological developments in defendant's field of business, but that plaintiff was not offered such training while white field service engineers were. The training that plaintiff refers to is system training. See Exhibit "T".

These allegations of discrimination are refuted by the affidavit of Mr. Roland B. Davie, Vice President of Telex Service Co., a division of the defendant corporation. In February, 1973, the system training program was implemented. Its purpose was to introduce "new hires to the IBM manufactured Central Processor. The course material includes console operations, data flow, and terminology -- to establish a basic knowledge level for the training courses on Telex devices." Exhibit "F", para. 3. Mr. Davie also notes that "[b]y the time the course was implemented, Mr. Bailey should have already exceeded the course objectives." Exhibit "F", para. 4. Plaintiff has had considerable equipment training, see Exhibit "F", para. 15, but in-depth systems training was not offered during his term of employment. Specialized systems skills were to be acquired "through on-the-job training, home study and experience working in a systems environment." Exhibit "F", para. 23.

It is clear to the Court that any failure of the defendant to offer system training to the plaintiff was not motivated by any discriminatory animus. When the plaintiff was initially employed, the training would have been useful to him but it wasn't available at that time. When the training became available, he had been employed for several years, had acquired considerable experience, and was well qualified, so that the training, which was designed for new or inexperienced employees, would have been of no benefit to him.

In a Title VII action, the plaintiff must prove a

"'racially premised'" disparity of treatment. International Bro. Teamsters v. United States, 431 U.S. 324, 335, 97 S.Ct. 1843, 52 L.Ed.2d 396 (1977). This ultimate factual issue is no longer in dispute in the case at bar, and the defendant is entitled to a judgment as a matter of law. Since the issue of liability has been decided against the plaintiff, the matters he has raised in regard to relief, even if they are in dispute, would now be immaterial and no bar to the granting of summary judgment to the defendant.

The parties have raised the question of attorney's fees. In regard to an award of attorney's fees to a successful Title VII defendant, the Supreme Court recently held that

> "a plaintiff should not be assessed his opponent's attorney's fees unless a court finds that his claim was frivolous, unreasonable, or groundless, or that the plaintiff continued to litigate after it clearly became so. And, needless to say, if a plaintiff is found to have brought or continued such a claim in bad faith, there will be an even stronger basis for charging him with the attorney's fees incurred by the defense." Christiansburg Garment Co. v. E.E.O.C., 46 U.S.L.W. 4105, 4108 (Jan. 23, 1978).

The Court can find no basis for reaching such a conclusion in the instant case. The defendant is therefore not entitled to an award of its attorney's fees.

For the foregoing reasons it is therefore ordered that defendant's Motion for Summary Judgment is hereby sustained. It is further ordered that the defendant is not entitled to an award of its attorney's fees.

It is so Ordered this 13th day of December, 1978.

H. DALE COOK
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. TROY W. PIERCE, BRENDA J. PIERCE, HOUSING AUTHORITY OF THE CITY OF TULSA, F.W. WOOLWORTH, a Corporation, d/b/a, WOOLCO, and CITICORP PERSON TO PERSON FINANCIAL CENTER, INC., Defendants.	)	CIVIL ACTION NO. 78-C-226-C

NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff herein, by and through its attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action, without prejudice.

Dated this 12th day of December, 1978.

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney

ROBERT P. SANTEE
Assistant United States Attorney

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing pleading was served on each of the parties hereto by mailing the same to them or to their attorneys of record on the 12th day of Dec., 1978.

Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ANTILLIAANSE LUCHTVAART MAATSCHAPPIJ N V	)	
	)	
Plaintiff,	)	
	)	
vs.	)	78-C-412-C
	)	
BOULDER BANK & TRUST COMPANY,	)	
	)	
Defendant.	)	

ORDER OF DISMISSAL

NOW on this 11th day of December, 1978, there comes on for review the Stipulation of Dismissal filed in captioned matter pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure. Having reviewed the Stipulation of Dismissal and being fully advised in the premises, the Court finds this action should be dismissed;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that captioned matter be dismissed with prejudice, each party to bear its own attorney fees and court costs incurred in the action.

(Signed) H. Dale Cook

H. DALE COOK
JUDGE OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN
DISTRICT OF OKLAHOMA

FILED

DEC 11 1978

Jack C. Silver, Clerk
U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	CIVIL ACTION NO. 78-C-528-B
JAMES D. GERLACH, Defendants.	)	

DEFAULT JUDGMENT

This matter comes on for consideration this 8th day of December, 1978, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, James D. Gerlach, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, James D. Gerlach, was personally served with Summons and Complaint on October 31, 1978, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, James D. Gerlach, for the sum of $727.93, plus the costs of this action accrued and accruing.

Allen E. Barrow
UNITED STATES DISTRICT JUDGE

APPROVED:

ROBERT P. SANTEE
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

CONLEY CORPORATION, an Oklahoma corporation, Plaintiff, vs. RAY MARSHALL, Secretary of the United States Department of Labor, GARY R. WIEDEMAN, BEN BARE, BOB VANDERGRIFF and JIM BUTLER, as employees and agents of the Occupational Safety and Health Administration, and OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, Defendants.	)	No. 78-C-489-C

ORDER SUSTAINING PLAINTIFF'S MOTION TO QUASH AND DISMISSING ACTION

Now on this 6th day of October, 1978, this cause comes on to be heard before the undersigned United States District Judge upon Plaintiff's Motion To Quash Inspection Warrant, which Motion was filed herein on the 2nd day of October, 1978. Plaintiff's Motion is directed at the inspection warrant issued by the Honorable Robert Rizley, United States Magistrate, on or about the 27th day of September, 1978, which warrant purports to give Defendants authority to inspect Plaintiff's premises located at 91st and Delaware, Tulsa, Tulsa County, State of Oklahoma.

The Court having examined the Affidavit of Gary R. Wiedeman, having examined the warrant which was issued based upon said Affidavit, having considered the authorities presented, and having heard the argument of counsel, finds that the warrant was improperly issued, since no sufficient factual basis was presented to the Magistrate to allow issuance of an inspection warrant. The Court further finds that Plaintiff's Motion To Quash Inspection Warrant should be sustained and that said warrant is void and a nullity. The Court further finds that Plaintiff's Motion for a Temporary Restraining Order, filed herein, is moot, and that, since said warrant

has been held to be void, Plaintiff's Complaint and Defendant's Counter-Claim are also moot, and the Court finds that the action should be dismissed.

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the purported inspection warrant issued on or about the 27th day of September, 1978, is void and a nullity.

It IS FURTHER ORDERED, ADJUDGED AND DECREED that the above-styled action is dismissed as moot.

/s/ H. Dale Cook
JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM:

SNEED, LANG, TROTTER,
ADAMS, HAMILTON & DOWNIE

James C. Lang
James C. Lang
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Gail M. Dickenson
Gail M. Dickenson
Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT , NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 8 1978

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ROBERT S. KINGREY

Plaintiff

v

No 78- C-304-B

R. H. BORTZ, MD

Defendant

STIPULATION FOR DISMISSAL

Come the parties and stipulate that based upon the representations of the defendant, N. A. Cotner, MD that he has never treated or performed surgery upon the Plaintiff, the parties stipulate that the court may enter its order dismissing said defendant.

FILED

DEC 12 1978

Jack C. Silver, Clerk
U. S. DISTRICT COURT

attorney for the Plaintiff

attorney for the Defendant

ORDER

Now on this 12th day of December, 1978, based upon the stipulation of the parties, the court does hereby order the dismissal as a party defendant, N. A. Cotner, MD.

Judge, United States District Court, Northern District of Oklahoma

LAWRENCE A. G. JOHNSON
ATTORNEY AT LAW
1732 E. 30TH PLACE
TULSA,
OKLAHOMA 74114
(918) 743-3012
743-0459

4

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	CIVIL ACTION NO. 78-C-544-C
CHRISTOPHER STEPHENS, Defendant.	)	

DEFAULT JUDGMENT

This matter comes on for consideration this 7th day of December, 1978, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Christopher Stephens, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Christopher Stephens, was personally served with Summons and Complaint on November 2, 1978, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Christopher Stephens, for the sum of $1,195.26, plus 7 percent interest from August 16, 1978, plus the costs of this action accrued and accruing.

/S/ H. Dale Cook
UNITED STATES DISTRICT JUDGE

APPROVED:

ROBERT P. SANTEE
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

THOMAS M. ATKINSON, Part-Time Referee/Judge in Bankruptcy, Plaintiff/Petitioner, vs. WILLIAM E. FOLEY, Director, Administrative Office of the United States Courts; BERKELEY WRIGHT, Chief, Bankruptcy Division, Administrative Office of the United States Courts, Defendants/Respondents.	78-~~C-567-B~~ 78-C-567

ORDER

SUA SPONTE, IT IS ORDERED that Plaintiff, Thomas M. Atkinson, post a bond in the sum of $100.00 as required by Rule 65(c) of the Federal Rules of Civil Procedure.

SUA SPONTE, IT IS FURTHER ORDERED that Berkeley Wright, Chief, Bankruptcy Division, Administrative Office of the United States Courts be and he is hereby dismissed from this litigation.

IT IS FURTHER ORDERED that the Temporary Restraining Order remain in effect until another Judge has been appointed and qualified and hears the Preliminary Injunction.

SUA SPONTE, the Court, on its own Motion, does recuse itself in this litigation. Having so ruled, the Motion to Disqualify filed by the defendants is now moot.

This Court calls to the attention of the Tenth Circuit that to be assured that any appearance of impropriety, bias, or prejudice to anyone or any interest be avoided, it would be advisable to seek my replacement outside the Tenth Circuit. It is my recommendation to the Honorable Oliver Seth, Chief Judge, Tenth Circuit Court of Appeals, that because of the complexities of this case, a Chief Judge, resident of his District, be asked to preside. I further suggest that only a Chief Judge whose District is served by a roving Judge can speedily acquaint himself with the necessary data and

procedures underlying the merits in this action---preferably, the presiding Judge should be acquainted with the difficulties of administering a District where a roving Judge assigned to the District takes no part of the case assignments, but exerts his alleged power in administrative business of the District.

ENTERED in Open Court this 7th day of December, 1978.

CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO. 78-C-396-B
	)	
TOMMY LEE JONES, BEAULAH MAE JONES, AFTON COOP. ASSOCIATION, GRAND LAKE BANK, a corporation, and GROVE WESTCO, a corporation,	)	
	)	
Defendants.	)	

NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff herein, by and through its attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action, without prejudice.

Dated this 6th day of December, 1978.

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney

ROBERT P. SANTEE
Assistant United States Attorney

pj

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing pleading was served on each of the parties hereto by mailing the same to them or to their attorneys of record on the 6th day of Dec, 1978.

Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROBERT E. BRUNER, individually and as ROBERT E. BRUNER, ADMINISTRATOR of the Estate of BOBBIE J. BRUNER,

PLAINTIFF,

VS.

POLLY F. DAVIS,

DEFENDANT.

78-C-520-C

FILED

DEC 5 1978

Jack C. Silver, Clerk
U. S. DISTRICT COURT

MOTION FOR DISMISSAL

The plaintiff moves the Court to dismiss this action. The plaintiff would advise the Court that this matter has been settled.

FRANK GREER
ATTORNEY FOR PLAINTIFF
101 A S. E.
Miami, Oklahoma 74354
918-542-1858

FILED

DEC 8 1978

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

This matter comes before the Court for hearing. The Court finds that this matter should be dismissed.

Dated this 7th day of December, 1978.

/s/ H. Dale Cook
JUDGE OF THE U. S. DISTRICT COURT
FOR THE NORTHERN DISTRICT

NOTE: THIS ORDER IS TO BE MAILED BY MOVANT TO ALL COUNSEL AND PRO SE LITIGANTS IMMEDIATELY UPON RECEIPT.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

HARRY C. NEAL, Plaintiff, vs. DR. JOE E. TYLER, Superintendent Eastern State Hospital, Vinita, Oklahoma, et al., Defendants.	)	78-C-409-B

ORDER

The Court has for consideration the Motion to Dismiss filed by the defendants, Dr. Joe E. Tyler and Dr. J. A. Nunez and the brief in support thereof, and, being fully advised in the premises, finds:

That on October 31, 1978, a Minute Order was entered directing the Plaintiff to repond to said Motion to Dismiss within ten days. That a letter was directed to the plaintiff in this cause so advising him. That no response has been received nor any extension of time sought or granted.

The Court further finds that the complaint instituted in this action fails to state a claim against the defendant, Dr. Joe E. Tyler, and further that the complaint, giving a broad reading advantage to the plaintiff, who appears pro se, does not state a claim against either of the named defendants. The Court further finds that jurisdiction in this case is questionable.

IT IS, THEREFORE, ORDERED that the defendants' Motion to Dismiss be and the same is hereby sustained and the complaint and cause of action are hereby dismissed.

ENTERED this 5th day of December, 1978.

Allen E. Barrow

CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ELMER THOMPSON,	)	
	)	
Plaintiff,	)	
	)	78-C-105-B
vs.	)	
	)	
J. D. DANIELS, et al.,	)	
	)	
Defendants.	)	

ORDER

The Court has for consideration the Motion for Leave to Withdraw filed by the plaintiff pro se, and has observed that the opposing counsel has no objection,

IT IS ORDERED that the plaintiff's Motion for Leave to Withdraw be treated as a Motion to Dismiss.

IT IS FURTHER ORDERED that the plaintiff's Motion to Dismiss be and the same is hereby sustained and the cause of action and complaint are hereby dismissed.

ENTERED this 5th day of December, 1978.

Allen E. Barrow

CHIEF UNITED STATES DISTRICT JUDGE

FILED

DEC 5 1978

Jack C. Silver, Clerk
U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MIKE BOGDANOFF and MARY LOUISE BOGDANOFF, Plaintiffs,	)	
vs.	)	No. 76-C-510-B
SOUTHWESTERN BELL TELEPHONE COMPANY, Defendant.	)	

JUDGMENT

This matter came on for hearing before the Court on this 5th day of December, 1978, and pursuant to the Joint Application for Judgment heretofore filed by the respective parties. Appearing on behalf of the plaintiffs, Mike Bogdanoff and Mary Louise Bogdanoff, is their counsel of record, Louis Levy of Tulsa, Oklahoma, and appearing on behalf of the defendant, Southwestern Bell Telephone Company, is their counsel of record, Thomas R. Brett of Tulsa, Oklahoma. Counsel re-affirmed the Joint Application heretofore filed and requested the Court to enter a judgment as set forth therein.

IT IS, THEREFORE, ORDERED AND ADJUDGED the plaintiffs, Mike Bogdanoff and Mary Louise Bogdanoff, are hereby granted judgment against the defendant, Southwestern Bell Telephone Company, in the amount of Seven Thousand Five Hundred Dollars ($7500.00) herein and the defendant is granted and adjudged an easement over the plaintiffs' subject real property as more particularly set forth and described in Exhibit A attached hereto as though fully set out herein.

Allen E. Barrow

UNITED STATES DISTRICT JUDGE

APPROVED:

Louis Levy
Attorney for Plaintiffs

Thomas R. Brett
Attorney for Defendant

E A S E M E N T

KNOW ALL MEN BY THESE PRESENTS:

That Mike Bogdanoff and Mary Louise Bogdanoff, husband and wife, of Tulsa County, State of Oklahoma, in consideration of the sum of One Dollar ($1.00) and other valuable consideration, receipt of which is hereby acknowledged, do hereby for themselves, their heirs, executors, administrators and assigns, grant and convey to Southwestern Bell Telephone Company, a Corporation of the State of Missouri, its associated and allied companies, its and their respective successors, assigns, lessees and agents, a right of way and easement to construct, operate, maintain, replace and remove such communications systems as the grantees may from time to time require, consisting of aerial and underground cables, poles, wires, conduits, manholes, drains and splicing boxes and surface-testing terminals, repeaters and markers, and other appurtenances, upon, over and under a strip of land one rod wide across the following described real property and premises situated in Tulsa County, State of Oklahoma, to-wit:

(1) A tract of land in the North Half (N/2) of the Northwest Quarter (NW/4) of the Northwest Quarter (NW/4) of the Northeast Quarter (NE/4), Section 20, Township Eighteen (18) North, Range Thirteen (13) East of the Indian Base and Meridian, Tulsa County, Oklahoma, beginning 990 feet north of the Southwest corner of the Northwest Quarter (NW/4) of the Northeast Quarter (NE/4) of Section 20, to the point of true beginning; thence east 260 feet to a point; thence north 140 feet to a point; thence west 88 feet to a point; thence north 76.5 feet to a point; thence west 172 feet to a point; thence south 216.5 feet to the point of beginning, containing 1.14 acres, more or less. The deed conveying said property to the grantors was recorded in the office of the clerk of the County of Tulsa on March 7, 1966, in Book 3685 at page 317.

(2) A tract of land situated in the West Half (W/2) of the Northwest Quarter (NW/4) of the Northeast Quarter (NE/4) of Section 20, Township Eighteen (18) North, Range Thirteen (13) East, Tulsa County, Oklahoma, more particularly described as follows: Beginning at the Southwest corner of the West Half (W/2) of the Northwest Quarter (NW/4) of the Northeast Quarter (NE/4), thence east parallel with the north line of said Section, a distance of 660 feet; thence due north 990 feet to a point; thence west parallel with the north line of said Section, a distance of 660 feet to center line of said Section; thence south 990 feet to the point of beginning; also described as the South 990 feet of the West Half (W/2) of the Northwest Quarter (NW/4) of the Northeast Quarter (NE/4), of said Section 20, Township 18 North, Range 13 East, Tulsa County, Oklahoma, containing in all fifteen (15) acres, more or less. The deed conveying said property to the grantors was recorded in the office of the clerk of the County of Tulsa on September 1, 1961, in Book 3173 at page 314.

EXHIBIT "A"

Said easement includes the right of ingress and egress to and from the same for the purpose of exercising the rights granted herein; to place surface markers on and beyond said strip; to clear and keep cleared all trees, roots, brush and other obstructions from the surface and sub-surface of said strip, and to permit in said strip the cables, wires, circuits and appurtenances of any other company. The eastern boundary of said one rod strip shall be a line parallel to and eight (8) and one-quarter (1/4) feet east of the center line of the Southwestern Bell Telephone Company underground conduit system presently existing on said land. The grantors, for themselves and their heirs, executors, administrators, successors and assigns, hereby covenant that no structure shall be erected or permitted on said strip. The wires, conduit or cable placed under this grant shall be at such a depth or height as to not interfere with grantors' reasonable ingress and egress across said strip.

Dated this _____ day of _____, 1978.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	CIVIL ACTION NO. 78-C-440-B
JACK SAMUEL WARD, CARRIE J. WARD, BENEFICIAL FINANCE CORPORATION, and PACIFIC FINANCE LOANS, Defendants.	)	

FILED

DEC 4 1978

Jack C. Silver, Clerk
U. S. DISTRICT COURT

JUDGMENT OF FORECLOSURE

THIS MATTER comes on for consideration this 4th day of ~~November~~ December, 1978, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendants, Jack Samuel Ward, Carrie J. Ward, Beneficial Finance Corporation, and Pacific Finance Loans, appearing not.

The Court being fully advised and having examined the file herein finds that Defendants, Beneficial Finance Corporation and Pacific Finance Loans, were served with Summons and Complaint on September 11, 1978; and, that Defendants, Jack Samuel Ward and Carrie J. Ward, were served with Summons and Complaint on September 13, 1978; all as appears on the United States Marshal's Service herein.

It appears that the Defendants, Jack Samuel Ward, Carrie J. Ward, Beneficial Finance Corporation, and Pacific Finance Loans, have failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a mortgage note and foreclosure on a real property mortgage securing said mortgage note, covering the following described real property located in Osage County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lots 21, 22, 23, and 24 in Block 14 in PALMER HIGHLAND ADDITION to Pawhuska, Osage County, Oklahoma, according to the recorded plat thereof.

THAT the Defendants, Jack Samuel Ward and Carrie J. Ward, did, on the 29th day of April, 1971, execute and deliver to the United States of America, acting through the Farmers Home Administration, their mortgage and mortgage note in the amount of $11,500.00 with 7 1/4 percent interest per annum, and further providing for the payment of annual installments of principal and interest.

The Court further finds that the Defendants, Jack Samuel Ward and Carrie J. Ward, made default under the terms of the aforesaid mortgage note by reason of their failure to make annual installments due thereon, which default has continued, and that by reason thereof, the above-named Defendants are now indebted to the Plaintiff in the amount of $11,261.66 as of October 30, 1978, plus interest from and after said date at the rate of 7 1/4 percent per annum, until paid, plus the cost of this action, accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against Defendants, Jack Samuel Ward and Carrie J. Ward, in personam, for the sum of $11,261.66 as of October 30, 1978, plus interest from and after said date at the rate of 7 1/4 percent per annum, plus the cost of this action, accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendants, Beneficial Finance Corporation and Pacific Finance Loans.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding

him to advertise and sell with appraisement the real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof.

UNITED STATES DISTRICT JUDGE

APPROVED:

ROBERT P. SANTEE
Assistant United States Attorney

cl

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

JIM R. LEWIS and
RHONDA O. LEWIS,

Plaintiffs,

VS. NO. 78-C-392 B

PRUDENTIAL PROPERTY AND
CASUALTY INSURANCE COMPANY,

Defendants,

APPLICATION FOR ORDER OF DISMISSAL

COMES NOW the Plaintiff and Defendant jointly, and show to the Court that the issues in the above captioned matter have been compromised and settled; and that there is no longer any adjudicable issue between the parties existing. That these parties would jointly move this Court to enter its Order dismissing the cause with prejudice.

ATTORNEY FOR THE PLAINTIFF

ATTORNEY FOR THE DEFENDANT

O R D E R

This matter comes on for consideration this 5th day of December 1978, on the joint Application of the Plaintiff and Defendant for an Order of Dismissal. The Court being fully advised finds that said matter should be dismissed with prejudice to any future action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above and foregoing cause of action and complaint are dismissed with prejudice to any future action.

JUDGE OF THE DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

THE DELAWARE TRIBE OF INDIANS,

Plaintiffs,

vs.

CECIL D. ANDRUS, Individually and as Secretary of the Interior of the United States, and FORREST GERARD, Individually and as Assistant Secretary of the Interior,

Defendants,

and

WINSTON & STRAWN, LOONEY, NICHOLS, JOHNSON & HAYES, and BRUCE MILLER TOWNSEND,

Plaintiffs,

vs.

CECIL D. ANDRUS, Individually and as Secretary of the Interior of the United States, and FORREST GERARD, Individually and as Assistant Secretary of the Interior,

Defendants.

FILED

DEC 4 1978

Jack C. Silver, Clerk
U. S. DISTRICT COURT

NO. 78 C 405 B

CONSOLIDATED WITH

NO. 78 C 423 B

ORDER

Now on this 4th day of December, 1978, this matter comes on for ~~hearing~~ consideration upon the Application of the Plaintiffs, The Delaware Tribe of Indians, for an Order substituting John G. Ghostbear for Bruce Miller Townsend as counsel of record for the Plaintiffs, The Delaware Tribe of Indians, and dismissing the Compalint without prejudice to Plaintiffs, The Delaware Tribe of Indians; and the Court, having examined the files and records herein, and being fully advised in the premises, finds that said Application should be granted.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that JOHN G. GHOSTBEAR be and he is hereby substituted as Attorney of Record for Bruce Miller Townsend, representing the Plaintiffs, The Delaware Tribe of Indians, and

IT IS FURTHER ORDERED by the Court that the Complaint herein be and hereby is dismissed without prejudice as to Plaintiffs, The Delaware Tribe of Indians.

Allen E. Barrow

JUDGE OF THE DISTRICT COURT

NOTE: THIS ORDER IS TO BE MAILED BY MOVANT TO ALL COUNSEL AND PRO SE LITIGANTS IMMEDIATELY UPON RECEIPT.

8.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. JAMES BROWN a/k/a JIM BROWN a/k/a JAMES R. BROWN, TOMMIE LEE BROWN a/k/a TOMMIE BROWN, BOB OMSTEAD d/b/a OMSTEAD SERVICE COMPANY, WILLIAM K. MYERS d/b/a BUCK MYERS MOTOR COMPANY, MASTER FINANCE, INC., YELLOW FRONT SALES AND RENTALS, INC., AETNA FINANCE COMPANY, INC., TULSA ADJUSTMENT BUREAU, INC., PAUL RIVER, BENEFICIAL FINANCE COMPANY, a Corporation, and ALLIED PLUMBING COMPANY OF TULSA, INC., Defendants.	)	CIVIL ACTION NO. 78-C-282-B

FILED

DEC 4 1973

Jack C. Silver, Clerk
U. S. DISTRICT COURT

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 4th day of ~~November~~ December, 1978, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney; and the Defendant, Master Finance, Inc., appearing by its attorney, R. K. Pezold; the Defendant, Tulsa Adjustment Bureau, Inc., appearing by its attorney, A. L. Haizlip; and, the Defendants, James Brown a/k/a Jim Brown a/k/a James R. Brown, Tommie Lee Brown a/k/a Tommie Brown, Bob Omstead d/b/a Omstead Service Company, William K. Myers d/b/a Buck Myers Motor Company, Yellow Front Sales and Rentals, Inc., Aetna Finance Company, Inc., Paul River, Beneficial Finance Company, a Corporation, and Allied Plumbing Company of Tulsa, Inc., appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Aetna Finance Company, Inc., was served with Summons, Complaint, and Amendment to Complaint on June 22, 1978, and August 10, 1978, respectively; that Defendant, William K. Myers d/b/a Buck Myers Motor Company, was served with

Summons, Complaint, and Amendment to Complaint on June 23, 1978, and August 10, 1978, respectively; that Defendant, Tommie Lee Brown a/k/a Tommie Brown, was served with Summons, Complaint, and Amendment to Complaint on June 26, 1978, and August 10, 1978, respectively; that Defendant, Bob Omstead d/b/a Omstead Service Company, was served with Summons, Complaint, and Amendment to Complaint on June 27, 1978, and August 10, 1978, respectively; that Defendant, Yellow Front Sales and Rentals, Inc., was served with Summons, Complaint, and Amendment to Complaint on June 27, 1978, and August 11, 1978, respectively; that Defendant, James Brown a/k/a Jim Brown a/k/a James R. Brown, was served with Summons, Complaint, and Amendment to Complaint on June 30, 1978, and August 10, 1978, respectively; that Defendant, Master Finance, Inc., was served with Summons, Complaint, and Amendment to Complaint on July 12, 1978, and August 11, 1978, respectively; that Defendants, Tulsa Adjustment Bureau, Inc., Beneficial Finance Company, a Corporation, and Allied Plumbing Company of Tulsa, Inc., were served with Summons, Complaint, and Amendment to Complaint on August 10, 1978; all as appears on the United States Marshal's Service herein; and, that Defendant, Paul River, was served by publication as shown on the Proof of Publication filed herein.

It appearing that the Defendant, Master Finance, Inc., has duly filed its Answer herein on July 27, 1978, and hereby disclaims any interest in and to the property being foreclosed; that Defendant, Tulsa Adjustment Bureau, Inc., has duly filed its Disclaimer herein on August 24, 1978; and, that Defendants, James Brown a/k/a Jim Brown a/k/a James R. Brown, Tommie Lee Brown a/k/a Tommie Brown, Bob Omstead d/b/a Omstead Service Company, William K. Myers d/b/a Buck Myers Motor Company, Yellow Front Sales and Rentals, Inc., Aetna Finance Company, Inc., Paul River, Beneficial Finance Company, a Corporation, and Allied Plumbing Company of Tulsa, Inc., have failed to answer herein and that default has been entered by the clerk of this Court.

The Court further finds that this is a suit based upon a mortgage note and foreclosure on a real property mortgage

securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

> Lot Ten (10), Block Forty-Six (46), VALLEY VIEW ACRES SECOND ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

THAT the Defendants, James Brown and Tommie Lee Brown, did, on the 16th day of June, 1976, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of $10,400.00 with 9 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, James Brown and Tommie Lee Brown, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of $10,423.35 as unpaid principal with interest thereon at the rate of 9 percent per annum from August 1, 1977, until paid, plus the cost of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, James Brown and Tommie Lee Brown, in personam, for the sum of $10,423.35 with interest thereon at the rate of 9 percent per annum from August 1, 1977, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendants, Bob Omstead d/b/a Omstead Service Company, William K. Myers d/b/a Buck Myers Motor Company, Yellow Front Sales and Rentals, Inc., Aetna Finance Company, Inc., Paul River, Beneficial Finance Company, a Corporation, and Allied Plumbing Company of Tulsa, Inc.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof, specifically including any lien for personal property taxes which may have been filed during the pendency of this action.

Allen E. Barrow
UNITED STATES DISTRICT JUDGE

APPROVED

Robert P. Santee
ROBERT P. SANTEE
Assistant United States Attorney

cl

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

THOMAS CADILLAC, INC., a corporation,

Plaintiff,

vs.

THE PENN MUTUAL LIFE INSURANCE COMPANY, a corporation,

Defendant.

No. 78-C-144-B

FILED

DEC 4 1978

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

Upon the joint Motion of Plaintiff and Defendant, and after due consideration, the Court finds that the settlement reached by Thomas Cadillac, Inc. and The Penn Mutual Life Insurance Company is fair and equitable, and that the action should be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the cause of and complaint are above styled action be and it hereby ~~is~~ dismissed, with prejudice.

DATED this 4th day of December, 1978.

Allen E. Barrow

CHIEF JUDGE
United States District Court for
the Northern District of Oklahoma

APPROVED:

David B. McKinney

DAVID B. McKINNEY
Attorney for Plaintiff

James V. Collins

JAMES V. COLLINS
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

v.

KRAFTCO CORPORATION, KRAFT FOODS DIVISION,

Defendant.

Civil Action
No. 75-C-436

STIPULATED JUDGMENT

This matter having come before this Court pursuant to request of the parties hereto, and the parties having stipulated that judgment in this action be entered upon the bases set forth below, and the Court being fully advised in the premises, enters the following findings and Order, to wit:

1) This Court has subject matter jurisdiction of this action, and has jurisdiction over the parties to this action.

2) This Judgment is entered pursuant to stipulation of the parties, and does not constitute an admission by the Defendant or a finding by this Court that Defendant has engaged in, or is engaging in, any violation of 42 U.S.C. § 2000e, et seq.

3) The parties having advised the Court that, as a part of this Stipulated Judgment, Defendant has agreed to enter into a private settlement of the claims of one Helen A. Wood presented on her behalf by Plaintiff

herein, and the parties having further advised the Court that Mrs. Wood has agreed to such a settlement and the release of her claims against Defendant, this Court finds that the claims presented by Plaintiff on behalf of Mrs. Wood should be dismissed with prejudice.

4) Pursuant to stipulation of the parties, this Court further finds that this Judgment fully resolves any and all claims against Defendant by Plaintiff in the Complaint as to Defendant's employment policies and practices at its Tulsa and Oklahoma City facilities prior to the date of this Judgment, and this Court further finds that dismissal of this action with prejudice is proper.

It is, therefore, ORDERED, ADJUDGED and DECREED THAT:

1) This action be, and hereby is, DISMISSED WITH PREJUDICE, with each party to bear its own costs.

2) Defendant immediately pay to Mrs. Wood the sums designated in the private settlement between the parties and Mrs. Wood, and Mrs. Wood immediately execute a release in favor of Defendant of her claims against Defendant, in a form satisfactory to Defendant.

SO ORDERED this 4th day of December, 1978.

Allen E. Barrow

U. S. District Court Judge

Agreed to:

ABNER W. SIBAL
General Counsel

WILLIAM L. ROBINSON
Associate General Counsel

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Office of General Counsel
2401 E Street, N.W.
Washington, D.C. 20506

GEORGE H. DARDEN
Assistant General Counsel

SAMUEL DASHIELL
Supervisory Trial Attorney

RALPH G. TORRES
Senior Trial Attorney

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Denver Regional Office of
General Counsel
1531 Stout Street, Sixth Floor
Denver, Colorado 80202

MARY T. MATTHIES
Matthies & Associates
Attorneys for Defendant

2600 Fourth National Bank Bldg.
Tulsa, Oklahoma 74103

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

DONALD GUTHRIE, Plaintiff,	)	
-v-	)	NO. 78-C-456-B
WILFRIED WEIDENFELDER, Defendant.	)	

STIPULATION OF ~~AGREEMENT~~ Dismissal

COME NOW the plaintiff, Donald Guthrie and the defendant, Wilfried Weidenfelder by and through their respective attorneys of record herein and hereby dismiss with prejudice their respective claims, one against the other, in the subject action.

DONALD GUTHRIE

BY: CHAPEL, WILKINSON, RIGGS, ABNEY & KEEFER

BY: Bill Wilkinson
Bill V. Wilkinson

Attorneys for Plaintiff

WILFRIED WEIDENFELDER

BY: HOUSTON AND KLEIN, INC.

BY: Kenneth M. Smith
Kenneth M. Smith

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of December, 1978, I mailed a true and correct copy of the above and foregoing Dismissal to Bill V. Wilkinson, Chapel, Wilkinson, Riggs, Abney, & Keefer, 1401 South Boulder, Tulsa, Oklahoma 74119, postage prepaid.

Kenneth M. Smith
Kenneth M. Smith